

(2006) 09 GUJ CK 0029

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No's. 3937, 3941, 3946, 4013, 4016, 4018, 4023 and 4026 of 2006

Vardhman Stamping Private Limited

APPELLANT

Vs

IMP Power Limited and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 200, 204, 239, 252
Negotiable Instruments Act, 1881 (NI) — Section 11(1), 138, 141, 141(2)

Citation : (2007) CriLJ 273

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : S.V. Raju and Saita S. Raju, for the Appellant; P.M. Thakkar and Samir J. Dave for Respondents 1 - 4, Sunit Shah, Ld. Public Prosecutor for State in CR. MA No. 3937 and 3941 of 2006 and M.A. Patel, LD. APP for State, for the Respondent

Judgement

S.R. Brahmbhatt, J.—Rule. Learned Counsel for the respective respondents waives service of rule in each of the applications.

2. The group of eight Miscellaneous Criminal Applications was listed for hearing. The learned Counsels of respective parties have made submissions at length since last three days and it was kept for orders. At the request of learned Counsels for the respective parties the entire group is being finally disposed of by this common judgment.

3. The petitioners have preferred these eight applications u/s 482 of the Code of Criminal procedure 1973 (herein after referred to as the Code for short)challenging the order dated 24.03.2006 passed by the Learned City Session Judge, in the Criminal Revision Applications preferred by the present Respondents and original accused in Criminal Cases filed by the present applicants against them for commission of offence punishable u/s 138 & 141 of the Negotiable Instruments Act 1881 (the N.I. Act for short) discharging the

Respondents No. 2,3 and 4 and ordering termination of the criminal proceedings against them.

4. The details of Miscellaneous Criminal applications are as under:

Rev. court	A. Cr. ainant	Pet/Comp	Res./	In High	Session	In Trial	I Accused.	Msc. Court.	Cri.A. Court	Cri. Court
3937/2006	310/2005	1398/2005	Ms. Vard-	1. IPM hman	Power	Stamping	Ltd			
Pvt. Ltd.	2. Ramnivas	R. Dhoot	Chairman	3. Ajay	R. Dhoot	Managing				
Director	4. Aditya	R. Dhoot	Joint	Managing		Director				
										3941/2006
316/2005		1399/2005		As		above		As		above
										3946/2006
309/2005		1400/2005		As		above		As		above
										4013/2006
314/2005		8646/05		As		above		As		above
										4016/2006
315/2005		3734/05		As		above		As		above
										4026/2006
308/2005		12927/05		As		above		As		above
										4018/2006
313/2005	9966/05	Ms.	Veer	As	above	Steel	Pro			-cessors
										4023/2006
312/2005		9967/05		As		above		As		above

5. The brief facts leading to filing of these petitions deserve to be set out as under. The petitioners, stated to be sister concerns, had business transactions with the Respondent No. 1 Company. The Respondent No. 2 is the Chairman the respondent No. 1 Company. The Respondent No. 3 is the Managing Director of the Respondent No. 1 Company, and Respondent No. 4 is the Joint Managing Director of the Respondent No. 1 Company. It is stated by the petitioners that they had supplied goods to the Respondent No. 1 Company and raised bills. Its also stated in the petition that the petitioner Companies have maintained running accounts of the Respondent No. 1 Company wherein an amount of Rs. One core and odd is outstanding from the Respondent No. 1 Company. It is stated by the petitioners that the Criminal Case No. 1398 of 2005 wherefrom the Revision Application No. 310 of 2005 had arisen, was filed in respect of the Cheque No. 177392 dated 31.03.2005 for Rs. 3,50,000=00; 401 of 2005 came to be filed by the petitioner as a Cheque No. 177392 dated 31.03.2005 for Rs. 3,50,000=00 signed by Respondent No. 3 and issued on behalf of Respondent No. 1 Company was returned on account of Stop Payment instructions issued by the drawer. The statutory Notice came to be issued which the Respondent No. 1 Company received and Respondents No. 2 to 4 refused to receive the same. The Criminal Case No. 1399 of 2005 came to be filed against the Respondents as the Cheque

No. 177391 dated 28.03.2005 for Rs. 6,25,000=00 signed by the Respondent No. 3 and issued on behalf of the Respondent No. 1 Company. The same came to be returned as the Drawer issued stop payment instructions. The statutory notice was issued that was received by Respondents. The Criminal Case No. 1400 of 2005 came to be filed against the Respondents as the Cheque No. 177390 dated 22.03.2005 was issued by the Respondents and it was also returned on account of stop payment instructions issued by the drawer. The statutory Notice was issued the respondents received the same. The Criminal Case No. 8646 of 2005 in respect of the Cheque No. 015544 dated 28.03.2005 for Rs. 5,00,000=00 which came to be returned with endorsement that it Sexceeded the arrangement. The statutory Notice was issued, the respondent No. 1 Company received the same, whereas the Respondent No. 2 to 4 refused to receive the same. The Criminal Case No. 9734 of 2005 in respect of the Cheque No. 015542 dated 28.03.2005 for Rs. 5,00,000=00 which came to be returned with endorsement that it Sexceeded the arrangement. The statutory Notice was issued, the respondent No. 1 Company received the same whereas the Respondent No. 2 to 4 refused to receive the same. The Criminal Case No. 9966 of 2005 came to be filed against the present respondents as the Cheque No. 015538 dated 31.12.2005 for Rs. 5,00,000=00 issued by the respondents was returned with endorsement that it Sexceeded the arrangements. The statutory Notice was issued the respondent No. 1 Company received the same whereas the Respondent No. 2 to 4 refused to receive the same. The Criminal Case No. 9967 of 2005 was filed by the petitioners against the respondents as the Cheque No. 015537 dated 15.12.2005 issued by the respondents for Rs. 5,00,000=00 was returned with endorsement that it Sexceeded the arrangements. The statutory Notice was issued the respondent No. 1 Company received the same whereas the Respondent No. 2 to 4 refused to receive the same. The Criminal Case No. 12927 of 2005 came to be filed against the present respondents as the Cheque No. 177389 dated 18.03.2005 signed by the accused No. 4, for Rs. 7,00,000=00 in favour of the petitioners came to be returned on account of stop payment instructions issued by the drawer. The statutory Notice was issued, the respondent No. 1 Company received the same whereas the Respondent No. 2 to 4 refused to receive the same.

6. The Trial Courts issued process after recording verification of the complainant. The respondents challenged the issuance of process in all the criminal cases by preferring eight revision applications u/s 397 of the Code before the City Session Court, details whereof are given herein above. The City Sessions Judge vide his orders dated 24.03.2006 partly allowed the Revision Applications by discharging the accused No. 2 to 4 and terminating the proceedings in criminal cases preferred by the present petitioners.

7. The petitioners have challenged the said orders dated 24.03.2006 of City Sessions Judge made in those eight Criminal Revision Applications in the present proceedings u/s 482 of the Code.

8. Learned Counsel Shri Raju for the petitioners has assailed the impugned order dated 24.03.2006 mainly on the ground that the order issuing process being interlocutory in nature no Criminal Revision Application against it is maintainable u/s 397 of the Code. Shri Rsaju has relied upon the decision of the apex court in case of Subramaniam Sethuraman v. State of Maharashtra and Anr. Reported in (2005)SCC 242 in support of his submission that once the Magistrate issued the process then it could be challenged only u/s 482 of the Code. Shri Raju has also relied upon the decision of the Apex Court in case of Adalat Prasad reported in (2004) 7 SCC 338 in support of his submission that order of process could not be challenged in revision u/s 397 of the Code.

9. Shri Raju has assailed the orders dated 24.03.2006 passed by the learned City Session Judge impugned herein on merits also. The Learned City Sessions judge has not appreciated the real ratio of the Apex Court's decision in case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and misconstrued the same for discharging the accused No. 2 to 4 in the pending criminal cases. Shri Raju has submitted that the decision in S.M.S. Pharmaceuticals is really helping the case of the present petitioners. The complaint indeed disclose the material and averments indicating that all the respondents are equally responsible for committing an offence u/s 138 read with Section 141 of the N.I. Act.

10. Shri Raju has submitted that the Learned City Sessions Judge erred in quashing the process in respect of accused No. 2 to 4 on the ground that as the process is said to have been issued only in respect of Section 138 the same can not be sustained against the respondent No. 2 to 4. Shri Raju has submitted that it was an error apparent rendering the impugned order illegal erroneous and untenable in eye of law. Shri Raju has submitted that in fact the penalty for offence is prescribed only u/s 138 of the N.I. Act and therefore the process if issued only u/s 138 against the directors and managing directors of the company was quite legal and valid.

11. Shri Raju has submitted that the learned Sessions Judge has erroneously come to the conclusion that the complaint and verification did not contain specific allegations against the respondents No. 2 to 4 hence the impugned order of the learned Sessions Judge deserves to be quashed and set aside. Shri Raju has submitted that cursory glance at the complaint and verification would show that there are specific averments made in the verification and complaint so as to invoke Section 138 as well as Section 141 of the N.I. Act.

12. Shri Raju has submitted that the learned city Sessions Judge has erroneously held that the ratio in case of S.V. Mazumdar v. Gujarat State Fertilizers is contrary to the ratio in case of 2005 AIOL 431 hence the same was not applicable to the present complaints.

13. The Learned City Sessions Judge has wrongly relied upon the Memorandum and Articles of Association for concluding that respondent No. 2 to 4 were not responsible for the affairs of the respondent company.

14. Shri Raju has submitted that the question of liability and that of cheque having been issued as collateral security cannot be ground for quashing the process as this being a matter of evidence to be proved in trial.

15. Shri Raju has submitted that the averments made in the complaint need to be seen for issuing the process. The verification need not be reflection or copy of the complaint. If the complaint contained averments disclosing offence by the Directors and others then the trial court is duty bound to issue process against all of them.

16. Shri P.M. Thakkar Learned Counsel for the Respondents 1 to 4 has submitted that the Order of Issuance of process cannot be said to be interlocutory so as to attract the bar of Section 397(2) of the Code. Shri Thakkar has submitted that the decision of apex court in case of Adalat Prasad and Sethuraman (Supra) are in altogether different context. They are in cases where it was a question as to whether once having issued the process the Learned Magistrate can review his own order and revoke the same. This point is decided that once the Magistrate has issued the process then he cannot review his own order and revoke the same. In the instant case altogether a different question is raised namely whether an order issuing process u/s 204 by the Magistrate is amenable to be challenged in revision application u/s 397 of the Code. Shri Thakkar has relied upon the decision of Apex Court in case of Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, in support of his submission that all the orders during the trial are not necessarily interlocutory orders so as to be barred by the provisions of Section 397(2) of the Code. In his submissions the nature of the order determines as to whether it is an interlocutory order barred by Section 397(2) of the Code. When objections raised against the interlocutory order if accepted are capable of putting an end to the entire trial then such order cannot be said to be interlocutory order barred by provisions of Section 297(2) of the Code. In this view of the matter the orders dated 24.03.2006 passed by the City Sessions Judge in Criminal Revisions Application discharging accused No. 2 to 4 cannot be said to be orders without jurisdiction. Shri Thakkar has also relied upon a decision of the Apex Court in case of M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, in support of aforesaid contention.

17. Learned Counsel Shri Thakkar has taken this Court through memos of complaints and its verifications and contended that at least in some of them the averments with regard to responsibility of each of the accused is not so specifically spelt out as to attract the provisions of Section 138 read with Section 141 of the N.I. Act. Shri Thakkar has also relied upon the decision in case of S.M.S. Pharmaceuticals (supra) and contended that looking to the sketchy averments in the complaint as well as the verification the orders made by the learned City Sessions Judge discharging the accused No. 2 to 4 are just and proper and deserve to be upheld.

18. Shri Thakkar has submitted that Section 141 of the N.I. Act provides that

every person incharge of or responsible to the Company, principal offender, for its conduct is liable to be held guilty u/s 138 read with Section 141 of the N.I. Act. Shri Thakkar has submitted that thus the Trial Court before issuing the process is required to come to the specific conclusion from the averments made in the complainant supported by verification that apart from the Company its Managing Directors, Directors and other office holders have been shown to be thus responsible to and in charge of the Company against whom the complaint is filed as principal offender. In view of this when the Court has issued process only u/s 138 of the N.I. Act it can be said that its Managing Director, Joint Managing Directors etc are not covered and hence they cannot be subjected to criminal trial. Shri Thakkar submitted that in many Criminal Cases on hand out of totalling eight the trial court has issued process only u/s 138 and not u/s 138 and 141 of the N.I. Act.

19. Learned Counsel Shri. Thakkar has invited this Court's attention to the impugned orders dated 24.03.2006 and submitted the City Sessions Judge has noted that in cases where the Cheques were returned due to instructions of Stop Payment" the amount of cheque was covered by the Bank Guarantee which were in fact encashed by the Complainant. In view of this also it can be said that the complaints were filed malafide with sole intention to harass the accused No. 2 to 4. Shri Thakkar has submitted that in view of encashment of Bank Guarantees covering the cheque amount in some of the cases it can be said that; no offence was committed, as no liability or debt existed on the date of when the cheques were returned.

20. This Court has heard the learned Counsels of the respective parties at length and perused all the relevant papers of complaints, verifications, orders issuing process against the respondents, memos of the revision applications, impugned orders discharging the respondent No. 2 to 4 of charges of committing offences u/s 138 read with Section 141 of the N.I. Act and memos of the present petitions and documents appended therewith.

21. The Apex Court has in case of Adalat Pradas (supra) observed that the Magistrate having issued the process u/s 204 of the Code has no power to review his own order and only remedy available against issuance of process being remedy u/s 482 of the Code. The 3 Judges Bench overruled the decision in case of K.M. Mathew v. State of Kerala reported in AIR 192 SC 2206. The 3 Judges Bench of the Apex Court has in case of Subramaniam Sethuraman(Supra) has reiterated and reconfirmed the earlier view of Apex Court in Adalat Prasad Case (supra) that the order issuing process cannot be reviewed by the Magistrate. The apex Court has in case of Subramaniam Sethuraman observed as under:

14. In Adalat Prasad Case this Court considered the said view of the Court in K.M. Mathew case and held that the issuance of process u/s 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the

Code for review of an order by the same court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. In that line of reasoning this Court in Adalat Prasad case held : (SCC p.343, para 16)

Therefore, we are of the opinion, that the view of this Court in Mathew case that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.

15. From the above, it is clear that the larger Bench of this Court in Adalat Prasad case did not accept the correctness of the law laid down by this Court in K.M. Mathew case. Therefore, reliance on K.M. Mathew case by the learned Counsel appearing for the appellant cannot be accepted nor can the argument that Adalat Prasad Case requires reconsideration be accepted.

16. The next challenge of the learned Counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge, cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion that once the plea of the accused is recorded u/s 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion.

At the same time Shri Thakkar's submission, that in all above cited cases there was no overt reference to provisions of Section 397(2) of the Code nor was there any occasion for examining the maintainability of Criminal Revision Application u/s 397 of the Code before the Learned Session Judge, deserves consideration. The 2 Judges Bench of the Apex Court in case of Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, has observed as under:

6. Discussion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner. Under Sub-section (2) of Section 397, there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In Amar Nath and Others Vs. State of Haryana and Another, , this Court has held that the expression "interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". In Madhu Limaye Vs. The State of Maharashtra, a three Judge Bench of this Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding cannot be held to be an interlocutory order. In V.C. Shukla Vs. State

through C.B.I., this Court has held that the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under Sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi final and therefore, the revisional jurisdiction u/s 397 could be exercised against the same. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under Sub-section (2) of Section 397 of the Code.

And in case of M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, the apex court has observed as under:

Para.8: The ;interdict contained in Section 397(2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this; if the contention of the petitioner who moved the superior Court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If it would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.

9. A three Judge Bench of this Court in Madhu Limaye Vs. The State of Maharashtra, ; laid down the following test: An order rejecting the plea of the accused on a point which, when accepted; will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2). This was upheld by the four Judge Bench of this Court in V.C. Shukla Vs. State through C.B.I.,

10. The above position was reiterated in Rajendra Kumar Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, Again in K.K. Patel and Another Vs. State of Gujarat and Another, : this Court stated thus:

It is well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana, Madhu Limaye v. State of Maharashtra, V.C. Shukla v. State through C.B.I. And Rajendra Kumar Sitaram Pande v. Uttam. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In

the present case, if the objections raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.

But in the latest judgment of the apex court in case of Poonam Chand Jain v. Fazru reported in AIR 2005 SC 38 reference is made to almost all the earlier decisions on the point. The apex court has observed in paragraph 13 as under:

Learned Counsel for the respondent submitted that the order to issue process is an interlocutory order, and therefore revision before the Additional Sessions Judge was not maintainable. Learned Counsel for the appellants with reference to certain observations in Rajendra Kumar Sitaram Pande and Ors. v. Uttam and An 1993(3) SCC 134 and K.K. Patel and Another Vs. State of Gujarat and Another, submitted that this Court has held that issuance of process or charges is not an interlocutory order. In both @page-SC 43 these cases reference was made to V.C. Shukla Vs. State through C.B.I., to hold that framing of charge is not an interlocutory order. The decision in V.C. Shukla's case (supra) was rendered in the background of the special statute applicable and it is clearly stated in para 47 to be so. In any event, that question is academic as the High Court did not interfere with the order passed by the Additional Sessions Judge on the ground that the revision was not maintainable in view of the prescription in Section 397(2) of the Code. Undisputedly, in a given case Section 482 of the Code can be pressed into service. It was held by this Court in Pramatha Nath's case (supra). Further, in Subramaniam's case (supra) as noted above, it was observed that issuance of process is a preliminary step in the stage of trial. In V.C. Shukla's case itself the distinction between cases covered by the Code and the special Statute governing that case, as noted above, has been clearly indicated. It was inter alia, observed as follows:

To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia, J in the case of Madhu Limaye Vs. The State of Maharashtra, clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in Corpus Juris Secundum, Vol. 60. We find ourselves in complete agreement with the observations made in Corpus Juris Secundum. It is obvious that an order framing of the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term "interlocutory order" as used in Section 11(1) of the Act. Wharton's Law Lexicon (14th Edn. P.529) defines interlocutory order thus:

an interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties.

Thus, summing up the natural and logical meaning of an interlocutory order, the

conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code, or any other statute. That is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in Section 11(1) of the Act.

This case was following in the case of Mohd. Amin Bros. v. Dominion of India AIR 1950 SC 139 where it was held that so far as this Court is concerned the principles laid down in AIR 1949 1 (Federal Court) settled the law. In this connection, in the aforesaid case, Mukherjea, J., speaking for the Court observed as follows:

The expression "final order" has been used in contradistinction to what is known as "interlocutory order" and the essential test to distinguish the one from the other has been discussed and formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this Court in their recent pronouncement in S. Kuppaswami's case (supra) and the law on point, so far as this Court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial Committee in Ramchand Manjimal v. Goverdhandas Vishandas 1920 (47) IA 124 and AIR 1933 58 (Privy Council) and the authorities of the English Courts upon which these pronouncements were based, it has been held by this Court that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties.

Thus, the Federal Court in its decision seems to have accepted two principles, namely:

- (1) that a final order has to be interpreted in contradistinction to an interlocutory order; and
- (2) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression "interlocutory order" its natural meaning according to the tests laid down, as discussed above, particularly in Kuppaswami's case (supra) and applying the non obstante clause, we are satisfied that so far as the expression "interlocutory order" appearing in Section 11(1) of the Act is concerned, it has been used in the natural sense and not in a special or a wider sense as used by the Code in Section 397(2). The view taken by us appears to be in complete consonance with the avowed object of the Act to provide for a most expeditious trial and quick dispatch of the case tried by the Special Court,

which appears to be the paramount intention in passing the Act.

22. Thus ultimately in view of the elaborate submissions advanced by learned Counsels of both the parties even on merits of the maintainability of the complaints against all the accused respondents this Court proposes to examine the maintainability of the complaints and order of process against all the accused and the sustainability of the impugned orders dated 24.03.2006 made by the learned city session judge discharging accused No. 2 to 4 and terminating criminal cases against them in respect of the offences alleged in the complaints filed by the present petitioners.

23. This Court has perused all the complaints. Its clearly mentioned in all the complaints that Accused No. 1 is Company, Accused No. 2 is its Chairman, Accused No. 3 is its Managing Director and Accused No. 4 is its Joint Managing Director. This Court is unable to accept the submission of Shri Thakkar that except in cause title nowhere the accused No. 2 to 4 are referred to with their specific role or responsibility in the complaints or verifications. The Revision Court has also erred in not noticing that in all the complaints the complainants have made specific averments sufficient to invoke applicability of Section 141 of the N.I. Act. The Apex Court has laid down parameters for invoking Section 141 against persons and officials of the Company guilty of offence u/s 138 of the N.I. Act. The Apex Court in case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, has observed in paragraph 19 of the judgment as under:

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint u/s 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable u/s 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable u/s 141 of the Act. By virtue of the office they hold as managing director or joint

managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered u/s 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141.

24. Thus the Chairman, Managing Director and Joint Managing Directors by virtue of their office can be said to be in charge of and responsible for the conduct of the business of the Company. Therefore they get covered u/s 141. The same way the signatory of the cheque which is dishonoured is also clearly responsible for the incriminating act and will be covered under Sub-section (2) of the Section 141. In view of the averments made in all the complaints and in view of the fact that accused No. 2 to 4 are Chairman, Managing Director and Joint Managing Director respectively can not escape the trial u/s 138 read with Section 141 of the N.I. Act. Their so-called non-involvement will have to be proved on leading evidence during the trial. It also deserves to be noted that the complaints also contain sufficient averments to show that the signatory of the cheques dishonored were one of the three accused only. The Revisional Court has patently erred in not noticing these glaring facts emerging from the complaints. Thus the finding of the Revisional Court on this aspect deserves to be quashed as being erroneous.

25. The contention of Shri Thakkar that in some of the complaints the learned Magistrates have not issued process u/s 141 of N.I. Act and hence the complaint against respondent No. 2 to 4 cannot be sustained cannot be accepted. The Revisional Court has also erroneously quashed the process against the accused No. 2 to 4 only on this ground. Had this been the ground for quashing the process against the accused No. 2 to 4 then the Revisional Court ought not to have quashed the process against the accused No. 2 to 4 in complaints wherein the learned Magistrate has issued process u/s 138 read with Section 141 of the N.I. Act. But the Revisional Court has quashed the process against accused No. 2 to 4 in all the complaints. This shows error apparent on the face of the order-dated 24.03.2006 rendering the same liable to be quashed and set aside. The decision of this Court in case of Manmath Manidharprasad Vyas Vs. Chunilal Maganlal Patel and Another, supports the proposition that even if the process is issued under particular section the prosecution can always adduce evidence in respect all the offences alleged against the accused. High Court of Orissa in case of Shyam Sunder Rout v. State of Orissa in Criminal Revision No. 586 of 1986 decided on 12.09.1990 observed that Section 190 of Cr.PC does not make it obligatory that any provision of law is to be quoted by the Magistrate. An error in mentioning the particular provision under which cognizance is taken would not vitiate the cognizance.

26. The contention that, Verification being sworn statement forms basis for issuing process and if it is not containing the essential averments required to initiate criminal proceedings then issuance of process based upon such

verification is required to be quashed, is misconceived and therefore deserved to be dismissed. It has become clear from the perusal of Section 200 of the Code that the Magistrate taking cognizance of offence on a complaint is required to examine the complainant and the witness if any and only the substance of such examination is required to be reduced into writing. Thus what is reduced in writing known as sworn statement or statement on verification is only gist of the complaint. Therefore the basis for issuance of process must be the complaint as whole. If it discloses commission of offence on the part of the accused then process cannot be quashed merely on account of so called infirmity in recording the statement of the complainant on oath. The decisions cited by Shri Raju on this point are aptly go in favour of the aforesaid proposition of law. The Madras High Court has held in case of Mukesh Jain Vs. Balachandar, that if allegation in the complaint and sworn statement make out a case then order of Magistrate dismissing the complaint merely on the ground of infirmity in sworn statement alone was deprecated.

27. The contention of the respondents that as the complainant had encashed the amount of bank guarantees covering the amount of dishonored cheques and therefore no liability existed on the date when the offence is said to have been committed can not be accepted. This allegation of the respondents is only in respect of some of the complaints only and the petitioners have disputed it. It is established proposition of law that question of existing debt or liability cannot be gone into while examining the plea for quashing the complaint u/s 138 of the N.I. Act. The decisions of the apex court in case of K.N. Beena Vs. Muniyappan and Another, A.V. Murthy Vs. B.S. Nagabasavanna, in case of and M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, go to show that the complaints were maintainable against all the accused and therefore the impugned orders dated 24.03.2006 passed by the learned City Sessions Judge in the criminal revision applications deserve to be quashed and set aside.

28. Against the backdrop of the aforesaid discussions this Court is of the considered view that these applications deserve to be allowed, the impugned orders dated 24.03.2006 made by the learned City Sessions Judge in respective Criminal Revision Applications filed by the accused deserve to be quashed and set aside and accordingly they are hereby quashed and set aside. The original order of process issued by the respective Learned Magistrate against all the accused Nos. 1 to 5 in the Criminal Cases mentioned herein above are restored and the Trial Courts are hereby directed to decide the same on merits in accordance with law. Rule in each case is made absolute.

29. Shri. Samir Dave, learned Counsel appearing for the respondents requests this Court to stay this order for a period of eight weeks with a view to enable the respondents to approach the Apex Court. Shri. Jayprakash Umet for Shri. Raju, learned Counsel for the petitioners submit that, he would have no objection if it is only for a period of four weeks. Accordingly this order is stayed till 17/10/2006.

30. Registry is directed to keep copy of this judgment & order in each of the

applications.