

Vishnoo Mittal Vs. M/s. Shakti Trading Company

Criminal Appeal No. _____ of 2025 @ SLP (Crl) No. 1104 of 2022 · Supreme Court of India · 2025-03-17 · Sudhanshu Dhulia · Ahsanuddin Amanullah · F2J-C-1538

Full judgment text

Vishnoo Mittal Vs. M/s. Shakti Trading Company

[Criminal Appeal No. _____ of 2025 @ SLP (Crl) No. 1104 of 2022]

Sudhanshu Dhulia, J.

1. Leave granted.

2. The appellant before this court has challenged the order dated 21.12.2021 of the learned Single Judge of the Punjab and Haryana High Court by which the appellant's petition under section 482 of Criminal Procedure Code, 1973 ('CrPC'), seeking quashing of proceedings initiated under Section 138 of Negotiable Instruments Act, 1881 ('NI Act') against the appellant, has been dismissed.

3. Admittedly, the appellant was the director of M/s Xalta Food and Beverages Private Limited (hereinafter 'corporate debtor'). There was a contract between the corporate debtor and the Respondent- M/s Shakti Trading Company where the respondent was to function as a super stockist of the corporate debtor. As a consequence of the business relationship between the two companies, the appellant, in his capacity as director of the corporate debtor, had drawn eleven cheques in favour of the respondent of varying amounts, the total amount being Rs.11,17,326/- (approximately). These cheques were dishonoured on 07.07.2018.

A legal notice under Section 138 of the NI Act was issued to the appellant by the respondent as the cheque amounts were not furnished to the respondent by the bank. Consequently, in September 2018, a complaint was filed before the appropriate Court by the respondent against the appellant for offences under Section 138 of NI Act. Meanwhile, on 25.07.2018, insolvency proceedings against the corporate debtor, of which the appellant was the director, commenced and a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (hereafter 'IBC') was imposed. On the same day i.e. 25.07.2018, the interim resolution professional (hereinafter 'IRP') was appointed in regard to the corporate debtor.

4. Meanwhile, vide order dated 07.09.2018, the Court had issued summons to the appellant in the proceedings initiated by the respondent against the appellant under section 138 of the NI Act. Aggrieved, the appellant approached the High Court under section 482 of CrPC challenging the summoning order and further, prayed for the quashing of the section 138 NI Act case against him in view of the moratorium issued under Section 14 of the IBC. By the impugned order dated 21.12.2021, the High Court, all the same, dismissed the appellant's petition and declined to quash the complaint against him. Now, the appellant is before us.

5. We have heard both sides and perused the material on record.

6. The case of the appellant is that the corporate debtor is presently facing insolvency proceedings before the National Company Law Tribunal (NCLT) and a moratorium order was issued on 25.07.2018 under Section 14 of the IBC. The relevant portion of Section 14 of the IBC reads as under:

"14. Moratorium.

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

7. Relying upon the above provision, the appellant submits that since the moratorium order was imposed on 25.07.2018 and was in operation, therefore, the proceedings under section 138 of the NI Act could not have been initiated against the appellant. He would further argue that although the cheques were drawn and dishonoured prior to the above date i.e., 25.07.2018, however, the notice under Section 138 of the NI Act was given on 06.08.2018 i.e., post 25.07.2018. Hence, the cause of action for the offence under Section 138 of the NI Act would commence after a period of 15 days calculated from 06.08.2018 and it would be 21.08.2018, but by this time moratorium had already been imposed on 25.07.2018.

The submission of the appellant was, however, not accepted by the High Court. The High Court, while dismissing the appellant's petition, relied upon the judgment of this Court in *P. Mohan Raj v. M/S Shah Brothers Ispat Pvt. Ltd.* (2021) 6 SCC 258 where it was held that the immunity granted by the moratorium order issued under Section 14 of the IBC can only be obtained by a Corporate Debtor and not by a natural person such as the present appellant, who was the Director of the Corporate Debtor. In para 102 of the said judgement, this Court had noted:

"for the period of moratorium, since no Sections 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Sections 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act."

However, in our opinion, the High Court erred in relying on *P.Mohan Raj* since the facts of that case were completely different and the present case is thus distinguishable from it.

8. In *P.Mohan Raj*, certain cheques drawn by the appellants therein were dishonoured on 03.03.2017 and 28.04.2017. Thereafter, demand notices dated 31.03.2017 and 05.05.2017 were issued by the complainant. The moratorium was imposed on 06.06.2017, which is clearly after the lapse of 15 days from the date of demand notices.

In other words, in that case, the cause of action under section 138 NI Act arose before the imposition of the moratorium and on these facts, this Court had held that section 14 of IBC bars or stays proceedings only against the corporate debtor and proceedings can be continued or initiated against the natural persons. The case at hand is totally different from *P.Mohan Raj* as the cause of action in the present case arose after the commencement of the insolvency process.

9. The return of the cheques dishonoured simpliciter does not create an offence under section 138 NI Act, which reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque,

within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability."

Clause (c) of the proviso to Section 138 of NI Act makes it clear that cause of action arises only when demand notice is served and payment is not made pursuant to such demand notice within the stipulated fifteen-day period. This Court in *Jugesh Sehgal v. Shamsheer Singh Gogi* (2009) 14 SCC 683 has explained the ingredients of Section 138 of NI Act offence as follows:

"13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice. Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."

In other words, the cause of action arises only when the amount remains unpaid even after the expiry of fifteen days from the date of receipt of the demand notice.

10. There is another aspect to this matter. In the present case, on 25.07.2018, the moratorium was imposed and management of the corporate debtor was taken over by the interim resolution professional as per section 17 of the IBC. Here, we would also like to reproduce extracts from section 17 of the IBC which are as follows:

"17. Management of affairs of corporate debtor by interim resolution professional.-

(1) From the date of appointment of the interim resolution professional,-

(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional;

(b) the powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the interim resolution professional;

(c)

(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional."

11. The bare reading of the above provision shows that the appellant did not have the capacity to fulfil the demand raised by the respondent by way of the notice issued under clause (c) of the proviso to Section 138 NI Act. When the notice was issued to the appellant, he was not in charge of the corporate debtor as he was suspended from his position as the director of the corporate debtor as soon as IRP

was appointed on 25.07.2018.

Therefore, the powers vested with the board of directors were to be exercised by the IRP in accordance with the provisions of IBC. All the bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the appellant to repay the amount in light of section 17 of the IBC. Additionally, we have been informed on behalf of the appellant that, after the imposition of the moratorium, the IRP had made a public announcement inviting the claims from the creditors of the Corporate Debtor and the respondent has filed a claim with the IRP.

12. Keeping in mind the above observations and distinguishing facts and circumstances of this case from that of P. Mohan Raj, we are of the considered view that the High Court ought to have quashed the case against the appellant by exercising its power under section 482 of the CrPC.

13. Therefore, we allow this appeal by setting aside the impugned order dated 21.12.2021 and quash the summoning order dated 07.09.2018. Further, we hereby quash the complaint case no.15580/2018, pending before the Chief Judicial Magistrate Court, Chandigarh, filed by the respondent against the appellant.

14. Pending application(s), if any, stand(s) disposed of.

.....J. [Sudhanshu Dhulia]

.....J. [Ahsanuddin Amanullah]

New Delhi.

March 17, 2025.

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