IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 940 OF 2024

1. Chetan Sunderji Bhanushali, aged adult, having address at Flat No. 501, Beach Apartment, Balaram Sahani Road, Opp. Novotel Hotel, Juhu, Mumbai – 400049.

2. Pravin Girish Chamaria, aged adult, having address at Flat No. 602, F wing, Abhishek Apartments, Four Bunglows, Varsova Link Road, Andheri (W), Mumbai – 400053

3. Ashapura Edifice Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its address at 901, Hallmark, Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051. ..Applicants

Versus

1. Hema Ramesh Chheda, aged 69 years, having its address at C/o M/s Malshi Ghela & co., 213, Narshi Natha Street, 1st Floor, Mumbai – 400009.

2. State of Maharashtra
Through Public Prosecutor,
Sessions Court, Mumbai.

3. M/s Arihant Realtors, a Partnership Concern carrying on its Business at 101, Hallmark Business Plaza, Opp. Gurunath Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051.

4. Ashapura Options Pvt. Ltd.
a company incorporated under the Companies Act 1956, having its address

at 901, Hallmark Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051. ...Respondents

WITH
CRIMINAL APPLICATION NO. 946 OF 2024

1. Chetan Sunderji Bhanushali, aged adult, having address at Flat No. 501, Beach Apartment, Balaram Sahani Road, Opp. Novotel Hotel, Juhu, Mumbai – 400049.

2. Pravin Girish Chamaria, aged adult, having address at Flat No. 602, F wing, Abhishek Apartments, Four Bunglows, Varsova Link Road, Andheri (W), Mumbai – 400053

3. Ashapura Edifice Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its address at 901, Hallmark, Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051. ..Applicants

Versus

1. Nemji Morarji Chheda, aged 68 years, having its address at C/o M/s Malshi Ghela & co., 213, Narshi Natha Street, 1st Floor, Mumbai – 400009.

2. State of Maharashtra Through Public Prosecutor, Sessions Court, Mumbai.

3. M/s Arihant Realtors, a Partnership Concern carrying on its Business at 101, Hallmark Business Plaza, Opp. Gurunath Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051.

4. Ashapura Options Pvt. Ltd. a company incorporated under the

Companies Act 1956, having its address at 901, Hallmark Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051. ...Respondents

WITH
CRIMINAL APPLICATION NO. 947 OF 2024

1. Chetan Sunderji Bhanushali, aged adult, having address at Flat No. 501, Beach Apartment, Balaram Sahani Road, Opp. Novotel Hotel, Juhu, Mumbai – 400049.

2. Pravin Girish Chamaria, aged adult, having address at Flat No. 602, F wing, Abhishek Apartments, Four Bunglows, Varsova Link Road, Andheri (W), Mumbai – 400053

3. Ashapura Edifice Pvt. Ltd., a company incorporated under the Companies Act, 1956, having its address at 901, Hallmark, Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051. ..Applicants

Versus

1. Jayvanti Nemji Chheda, aged 68 years, Indian Inhabitant, having its address at Plot No. 207-C, Flat No. 403, Bhakti Residency, Dr. B. A. Road, Matunga (E) Mumbai – 400019.

2. State of Maharashtra
Through Public Prosecutor,
Sessions Court, Mumbai.

3. M/s Arihant Realtors, a Partnership Concern carrying on its Business at 101, Hallmark Business Plaza, Opp. Gurunath Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051.

4. Ashapura Options Pvt. Ltd.

a company incorporated under the Companies Act 1956, having its address at 901, Hallmark Business Plaza, Opp. Gurunanak Hospital, Sant Gyaneshwar Marg, Bandra (E), Mumbai – 400051. ...Respondents

Mr. Mahendra Svar i/by Ms. Prachi Patel, for the Applicants in all.
Mr. Jatin Karia (Shah) a/w Ms. Snehankita Munj, Ms. Shraddha Kamble & Ms. Dipti J. Karia, for the Respondent.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 22nd JANUARY 2026
PRONOUNCED ON : 10th FEBRUARY 2026

JUDGMENT:

1. By these applications under Section 482 of the Code of Criminal Procedure, 1973 ("the Code, 1973), the applicants take exception to the orders passed by the learned Additional Sessions Judge, Greater Bombay, in Criminal Revision Applications, whereby the revision applications preferred by the applicants against the order passed by the Magistrate, issuing process against the applicants for an offence punishable under Section 138 r/w Section 141 of the Negotiable Instruments Act, 1881 ("the N. I. Act, 1881), came to be dismissed.

2. As a common question of law arises for determination in an almost identical fact - situation, all these applications were heard together and are being decided by this common judgment.

3. The Respondent No. 1 – original complainant, in each of the applications, filed a complaint for an offence punishable under Section 138 r/w Section 141 of the N. I. Act, 1881, with the assertion that, believing the representations of the applicants and the co-accused, the complainant had advanced varying amounts by way of loan, by cheques drawn in favour of M/s. Arihant Realtors (A1), a partnership firm; of which the applicants are the partners. Towards the discharge of the said liability, the accused had drawn the cheques on State Bank of Patiala, Bandra Branch, Mumbai. The said cheques were returned unencashed with the remarks 'Insufficient Funds'. The accused failed to pay the amount covered by the subject cheques despite service of the demand notice, within the stipulated period.

4. The learned Magistrate ordered the issuance of process against the applicants for an offence punishable under Section 138 r/w Section 141 of the N. I. Act, 1881, in each of the three complaints.

5. Being aggrieved, the applicants preferred revision applications before the learned Sessions Judge. By the impugned order the learned Sessions Judge dismissed the

revision applications recording that, the order of issuance of process did not warrant interference in exercise of revisional jurisdiction.

6. Being further aggrieved, the applicants have approached this Court invoking its inherent jurisdiction.

7. I have heard Mr. Mahendra Svar, the learned Counsel for the Applicants, and Mr. Jatin Karia, the learned Counsel for the Respondent No. 1, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

8. Mr. Svar, the learned Counsel for the applicants, submitted that, though, multiple grounds were raised before the Revisional Court, the applicants restrict the challenge to the order of issuance of process to the non-compliance of clause (a) of the proviso to Section 138 of the N. I. Act, 1881, as the subject cheques were invalid on the day they were presented for encashment.

9. Amplifying the submission, Mr. Svar would urge that, in the complaints it is categorically mentioned that, the accused No. 1 had drawn the cheque on State Bank of Patiala, payable

on 17th March, 2021. However, in view of the amalgamation of the State Bank of Patiala with the State Bank of India, with effect from 01st April, 2017, pursuant to Acquisition of State Bank of Patiala Order 2017, the cheques drawn on State Bank of Patiala, became invalid after 31st December, 2017. Therefore, the subject cheques were invalid on the date, they were presented for encashment with the payee's banker. In such circumstances, the cheques could not have been returned unencashed on account of alleged "insufficiency of funds". As the cheques had become invalid, the drawee bank could not have honoured the cheques.

10. Thus, as the subject cheques were not presented with the drawee bank before the 31st December, 2017, there was a clear non-compliance of clause (a) of the proviso to Section 138 of the N. I. Act. Resultantly, the very basis of the prosecution for the offence punishable under Section 138 of the N. I. Act, 1881 gets dismantled, submitted Mr. Svar.

11. To buttress the aforesaid submission, Mr. Svar invited the attention of the Court to 'Acquisition of State Bank of Patiala Order 2017' issued by the Government of India, and the communication dated 28th March, 2017 addressed by the RBI to

inter alia all the braches of the State Bank of Patiala. It was submitted that, the initial period of validity of the cheques drawn on the State Bank of Patiala was eventually extended till 31st December, 2017. As the subject cheques were not valid on 28th March, 2021, when they were allegedly returned unpaid, the provisions contained in Section 138 of the N. I. Act, would not be attracted, urged Mr. Svar.

12. To lend support to these submissions, Mr. Svar placed a very strong reliance on a judgment of the Allahabad High Court in the case of ***Archana Singh Gautam Vs. State of U.P. and another***[1], and a judgment of the Andhra Pradesh High Court in the case of ***Ganta Kavitha Devi and others Vs. State of Andhra Pradesh and another***[2].

13. Per contra, Mr. Jatin Karia, the learned Counsel for the Respondent No. 1, would urge that, the prayer for quashing the order of issue of process does not deserve to be entertained, as it is based on documents, which were not part of the record of the Trial Court. Moreover, the orders issued by the Central Government and Reserve Bank of India, which are the basis of the submissions sought to be canvassed by Mr. Svar, were not

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1 2024 SCC OnLine All 4599

2 2024 SCC OnLine AP 5115

tendered either before the trial Court or the revisional Court. In these circumstances, the plea for quashment of the proceedings on the basis of material, which is for the first time produced before this Court, cannot be countenanced.

14. Secondly, Mr. Karia would urge, the applications raise disputed questions of facts which cannot be determined in exercise of the inherent jurisdiction under Section 482 of the Code, 1973. Those questions can be legitimately adjudicated by the Trial Court only post appraisal of evidence. Thirdly, since the plea of the accused has been recorded and the trial has commenced, at this stage, this Court may not entertain the prayer for quashment of the proceedings.

15. On the merits of the ground of alleged invalidity of the subject cheques, Mr. Karia submitted that, the cheques have been returned by the drawee bank with the remarks, 'Funds Insufficient' and not on account of alleged invalidity of the cheques. It implies that, the drawee bank has not treated the cheques to be invalid and, consequently, the statutory presumption contained in Section 146 of the N. I. Act, 1881 that, the bank's slip indicating that the cheque has been dishonored, operates and the Court is enjoined to hold that, the cheque has

indeed been dishonoured, unless and until the said fact is disproved. In the face of the bank's memo that the cheques have been dishonoured on account of insufficiency of funds, the onus shifts on the applicants to show to the contrary, and that can only be done at the stage of trial.

16. Mr. Karia would further submit that, the accused have not disputed the factum of the issuance and dishonour of the cheques. Nor the accused gave any reply to the statutory demand notice. The stand taken by the accused is false and dishonest, and, the accused cannot be permitted to take advantage of their own wrong. Since the question as to whether the subject cheques had become invalid is a matter which requires adjudication at the trial, in the light of the statutory presumptions, the complaints under Section 138 of the N. I. Act, 1881, cannot be interdicted, at this stage, was the thrust of the submission of Mr. Karia.

17. To bolster up these submissions, Mr. Karia placed reliance on the judgments of Punjab and Haryana High Court in the cases of ***Surjit Kumar Vs. Sunil Kumar Dalmia***[3], ***M/s. K. K. Tractors and Ors. Vs. M/s. Mahindra and Mahindra Limited***[4],

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3 CRM-M/51125/2023

4 CRM-M/17555/2022

Balkour Singh Vs. State of Punjab and others[5], of the Allahabad High Court in the case of ***Maksud Ashraf Khan Vs. State of U.P. and others***[6], of Uttarakhand High Court in the case of ***Rohit Goyal Vs. Amarjeet Singh***[7]***,*** and of Gujarat High Court in the case of ***Bhikhabhai Laljibhai Patel Vs. State of Gujarat and others***[8], wherein the defences based on the invalidity of the cheque on account of acquisition and merger of the drawee bank with another bank, came to be repelled.

18. Before adverting to deal with the aforesaid rival submissions, forcefully canvassed across the bar, it may be appropriate to note the uncontroverted facts. The alleged loan transaction between the complainant and the accused took place in the year, 2014. The complainant claimed, the accused paid interest till the year, 2019. Eventually, the accused had drawn the cheques towards discharge of the liability, on State Bank of Patiala, Bandra Branch, payable on 17th March, 2021, (in complaint No. 1630/SS/2021, the subject matter of Criminal Revision Application No. 940/2024) (in complaint No. 1231/SS/2021, the subject matter of Criminal Application No.

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5 CRM-M/36565/2019

6 Application/ 3871/2023

7 Crl. Misc. Apl Nos. 298/2024, 310/2024 & 306/2024

8 Crl. Misc. Apl No. 307/2014

946/2024) and (in complaint No. 1634/SS/2021, the subject matter of Criminal Application No. 947/2024). The said cheques were presented for encashment on 28th March, 2021, with the Complainant/banker - Union Bank of India. Those cheques were returned unencashed vide cheque return memo, dated 28th March, 2021, with the remarks, "Funds Insufficient". The complainant claimed to have issued demand notices on 30th March, 2021. Alleging non-compliance of the demands within the statutory period, the complaints came to be lodged.

19. An offence punishable under Section 138 of the N. I. Act, 1881, can be said to have been committed upon proof of concomitant factors. One of the conditions to be satisfied before an offence under Section 138 of the N. I. Act, 1881, can be said to have been committed is the presentation of the cheque within the stipulated period under clause (a) of the proviso. It 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 -
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> (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;"
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> .....

20. On its plain reading, the fulfillment of the condition of valid presentation of the cheque for encashment hinges upon the two factors. One, presentation of the cheque within the period of its validity and, two, if the cheque does not contain any validity period, then within a period of six months from the date on which it is drawn. The Parliament has addressed a situation where the validity period of the cheque is less than the period of six months. Thus, by using the expression 'whichever is earlier', the Parliament has mandated that, the presentation shall be within the period of validity of cheque, if it is less than six months from the date on which the cheque is drawn. Often, the cheques contain an endorsement to the effect, "valid for specified period of months". In that event, the cheque must be

presented for encashment within the said period from the date it is drawn.

21. The question that wrenches to the fore is, whether the expression, "within the period of its validity" is elastic enough to cover a situation where the cheque is rendered invalid, even though the period of validity, expressly mentioned on the cheque, has yet not expired? Since the Parliament has, in the first part of the clause (a) of the proviso, fixed the period within which the cheque shall be presented for encashment to the drawee bank, the expression 'within the period of its validity' used in the later part of the proviso, need not be only in reference to the duration of time specified on the cheque. The period of validity may also be determined with reference to an incident which renders the cheque invalid, even though the period of validity, expressly specified on the cheque, is yet to expire. The word 'period' may not govern the word 'validity'. In the later part of the clause (a) of the proviso, it is the validity of the cheque on which there is more emphasis, than the 'period'. To put it in other words, the expression 'period of validity' does not seem to be restricted to the specified 'term' of validity, and the question of invalidity of the cheque may arise on account of

the circumstances, which may curtail the express specified 'term' of validity.

22. In the case of ***Archana Singh Gautam (supra),*** on which reliance was placed by Mr. Svar, the cheque was drawn on an account maintained with Allahabad Bank, payable on 02nd June, 2023, though the Allahabad Bank had already merged with the Indian Bank on 01st April, 2020, and the cheques drawn on Allahabad Bank were valid upto 30th September, 2021, only. In that context, a learned Single judge of the Allahabad High Court held that, if any invalid cheque was presented to the drawee bank and the same was dishonoured, no liability under Section 138 of the N. I. Act would be attracted. Since the cheque drawn on Allahabad Bank was valid, up to 30th September, 2021 only, dishonourment of such cheque after 30th September, 2021 would not attract the penal liability under Section 138 of the N.I. Act, as the cheque was not valid on the date of presentation as mandated by the clause (a) of the proviso to Section 138 of the N. I. Act.

23. In the case of ***Gantha Kavitha Devi (supra)***, the cheque in question was drawn on State Bank of Hyderabad, payable on 20th September, 2021. The said cheque was returned unpaid

with an endorsement, "invalid cheque (SBH)", as the earstwhile State Bank of Hyderabad stood merged with State Bank of India and the cheques drawn on earstwhile State Bank of Hyderabad were valid only till 31st March, 2018. In the light of the aforesaid facts, a learned Single Judge of the Andhra Pradesh High Court after adverting to clause (a) of the proviso to Section 138 of the N. I. Act, 1881, enunciated that, it is clear that if any invalid cheque is presented to the drawee bank and the same is dishonoured, it can be said that, there is no liability under Section 138 of the N. I. Act. The subject cheque was not a valid cheque on the date of its presentation, as required by clause (a) of the proviso and, hence, dishonourment of the same would not attract the liability under Section 138 of the N. I. Act.

24. Mr. Svar, would urge, the decision in the case of ***Gantha Kavitha Devi (supra),*** fully governs to the facts of the case at hand, as the State Bank of Hyderabad was also an Associate Bank which came to be merged with the State Bank of India like State Bank of Patiala. And the cheques therein were presented for encashment after its validity period as stipulated by the RBI, like the case in hand.

25. It is pertinent to note that, in the case of ***Archana Singh Gautam (supra),*** as well as ***Gantha Kavitha Devi (supra)***, the cheques were returned by the drawee bank by making an endorsement which reflected upon the validity of the cheque. In the case of ***Archana Singh Gautam (supra)***, the cheque was returned with the remarks, "wrongly delivered not drawn on us" by the Indian Bank, into which the Allahabad Bank had merged. Whereas, in the case of ***Ganta Kavitha Devi (supra)***, the cheque was returned with the remarks, "invalid cheque (SBH)". Yet, the process for an offence punishable under Section 138 of the N. I. Act, 1881 was issued in those cases.

26. The object of Section 138 of the N.I. Act, 1881 is to inculcate faith in the efficacy of banking operations and ensure credibility in transacting business through cheques. The Supreme Court has thus delineated the approach in the case of **Dalmiya Cement (Bharat) Ltd. Vs. Galaxy Traders & Agencies Ltd. & Ors**[9]., that efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country.

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9 (2001) 6 SCC 463

27. In the case of **NEPC Micon Ltd. & Ors. Vs. Magma Leasing Limited**[10], following the three-Judge Bench judgment in the case of **Modi Cements Ltd. V. Kuchil Kumar Nandi**[11], wherein it was enunciated that, return of the cheque on account of stop payment instruction will not preclude an action under Section 138 of the N. I. Act, 1881, the Supreme Court held that, when the cheque is returned by a bank with an endorsement "account closed", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the N. I. Act, 1881.

28. The position in law is that, it is the dishonour of the cheque that assumes importance and the reason for dishonour, especially "stop payment", "refer to drawer", "account closed", "exceeds agreement" and the like, are not of decisive significance. This factor also deserves to be kept in view.

29. In a case of the present nature, however, the reason for the return of the cheque assumes significance. If the cheque is not returned with a specific endorsement that, the cheque is invalid,

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10 (1999) 4 SCC 253

11 (1998) 3 SCC 249

but on account of insufficiency of funds, then as rightly submitted by Mr. Karia, the presumption contained in Section 146 of the N. I. Act, 1881, comes into play and the onus would shift on the drawer to rebut the presumption that, the dishonour of the cheque was not on account of insufficiency of funds. The presumption contained in Section 146 of the N. I. Act, is also a presumption of law and the Court is enjoined to presume the said fact, as it is a mandatory and not a permissive presumption.

30. It is true, the Acquisition order issued by the Central Government and the order/circular issued by the RBI, cannot be brushed aside lightly. However, when the cheque is returned with the remarks, "Insufficient Funds", the presumption contained in Section 146 of the N. I. Act, 1881, would be required to be rebutted by demonstrating that, the drawee bank could not have honoured the cheque in question as its period of validity had expired.

31. There is another facet which the Court cannot lose sight of. The drawer of the cheque may deliver a signed blank cheque to the payee, or the drawer of cheque may himself draw a post dated cheque. In the intervening period, on account of

acquisition or merger of the drawee bank, the validity period of the cheque may expire. If the payee after a lapse of time fills in the date on the cheque and presents the cheque for encashment, should the drawer be permitted to wriggle out of the situation by taking a stand that, in the intervening period the cheque has been rendered invalid on account of acquisition or merger of 'the bank'?

32. The legal position has crystallized to the effect that, even if a blank signed cheque leaf is delivered to the payee, towards debt or liability, and the payee fills in the particulars, the cheque is not rendered invalid and the presumption contained in Section 139 of the N. I. Act, 1881 is attracted. In the case of ***Bir Singh Vs. Mukesh Kumar***[12], after adverting to the settled line of precedent, the Supreme Court enunciated the law as under:-

> "33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debit or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
> 34.If a signed blank cheque is voluntarily presented to a

12 (2019) 4 SCC 197

> payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
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> .....
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> 36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

33. The aforesaid pronouncement was approved by a three-Judge Bench of the Supreme Court in the case of ***Kalamani Tex and Another Vs. P. Balasubramanian***[13].

34. Consistent with the object of the penal provisions incorporated in Section 138 of the N. I. Act, 1881, a dishonest drawee cannot be permitted to take benefit of such a situation and defeat the rights of a payee who alters his position on the basis of the sanctity of the cheque as a negotiable instrument, especially when such cheque is returned unencashed with the remarks "insufficiency of funds".

35. In my considered view, therefore, in a situation of the present nature, where the cheques have been returned with the

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13 (2021) 5 SCC 283

remarks, “funds insufficient”, and not on account of alleged invalidity of the cheques, the question as to whether, the cheques were dishonoured for insufficiency of funds becomes a tribal issue and must be adjudicated at the trial. Different High Courts have also adopted similar approach in a variety of fact-situations.

36. In the case of ***Surjit Kumar (supra)***, where the cheque was returned unencashed with the remark that, ‘State Bank of Patiala cheques are not acceptable at State Bank of India due to the merger of State Bank of Patiala in State Bank of India’, a learned Single Judge of Punjab and Haryana High Court held that, whether the custody of the cheque has been misused by the complainant or not, was a question of trial which could be adjudicated only after the parties lead evidence and, thus, declined to quash the complaint.

37. In the case of ***M/s. K. K. Tractors & Ors. (supra)***, again in the context of the presentation of the cheque, beyond the stipulated period after the merger of the SBI’s Associate Bank with State Bank of India, a learned Single Judge declined to quash the complaint opining that, the notifications and documents annexed to the applications under Section 482 of

the Code, cannot be considered as evidence so as to quash the complaint in exercise of inherent power.

38. Similar view was expressed in the case of ***Balkaur Singh (supra)***, by another learned Single Judge of Punjab and Haryana High Court. It was observed that, invalidation of cheque on account of merger with another bank would be a disputed question of fact and would be a probable defence that the petitioner is free to take before the trial Court. The Court cannot negate the complainant's case without allowing the complainant to lead evidence while exercising its discretionary power under Section 482 of the Code, 1973.

39. In the case of ***Bhikhabhai Laljibhai Patel (supra),*** wherein the drawee bank had merged with the another bank and the cheque was returned unencashed with the remarks "funds insufficient", a learned Single Judge of Gujarat High Court declined to exercise the power under Section 482 of the Code, observing *inter alia* as under:

> *"8. Undisputedly, all the contentions raised by the petitioner herein above are disputes issues and there the question of fact would be determined by the learned trial Court after recording evidence. Whether Khedbrahma Nagrik Sahkari Bank Limited in which the petitioner has maintained his account was merged with Janta Sahkari Bank Limited and*

> *the clearing house was not aware of the said aspect or whether the cheque has not been returned for the purpose of "Fund Insufficient" are all disputed questions of fact and can be decided after recording the evidence. When the learned trial court has issued process, before the learned trial Court it was on bank return memo, which was indicated that the cheque in question was returned unpaid due to "fund Insufficient" and upon such, the learned Trial Court has issued process against the petitioner accused. In this given facts and circumstances, this Court cannot come to the conclusion that prima facie case is not made out and that too under extraordinary jurisdiction vested in Section 482 of the Code."*

40. The conspectus of aforesaid consideration is that, though the expression 'within the period of its validity' used in the later part of the clause (a) of the proviso to Section 138 of the N. I. Act, 1881, is elastic enough to cover in its fold a case where the validity of the cheque, is affected by the factors like acquisition by or merger with another bank, despite the validity period specifically mentioned on the cheque not having come to an end, yet, the attendant circumstances bear upon the question whether the cheque has been presented within its validity period. In cases where despite the original drawee bank having ceased to be 'the bank' within the meaning of clause (a) of the said proviso the cheque is returned unencashed with the remarks "insufficiency of funds" and the like, the investigation

into facts becomes necessary, and the question whether the drawee bank could have honoured the cheque as it was rendered invalid, would warrant adjudication at the trial. Whereas, in cases where the cheque has been returned with the remarks, 'invalid' or 'presented on the successor bank after the period of the validity of the cheque' and the like, compliance of clause (a) of the proviso to Section 138 of the N. I. Act, 1881, in the matter of presentation of the cheque within the validity period, could be examined by the Court, in the light of the attendant facts and circumstances of the case. No straight-jacket formula that, since the cheque appeared to have been presented after expiry of the period of validity of the cheque drawn on the earstwhile drawee bank, no offence punishable under Section 138of the N. I. Act, is made out, can be adopted.

41. The facts of the case at hand appear to fall in the category of cases where on account of the return of the cheque with the remarks, "Funds Insufficient", the question as to whether the cheque was presented beyond its validity period warrants adjudication at the trial. Resultantly, the prayer of the applicants to quash the complaints for the offence punishable under Section 138 r/w 141 of the N. I. Act, 1881, cannot be countenanced.

42. Hence, the applications stand dismissed.

43. No Costs.

[N. J. JAMADAR, J.]