



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

CRIMINAL PETITION NO.4086 OF 2019

(482 (Cr.PC)/528 (BNSS))

C/W

CRIMINAL PETITION NO. 3273 OF 2019

(482 (Cr.PC)/528 (BNSS))

IN CRL.P. No.4086/2019

BETWEEN:

1. M/S. BIODIVERSITY CONSERVATION
INDIA PRIVATE LIMITED
ZED HOMES, NO.37/1-1,
AGA ABBAS ALI ROAD,
BANGALORE-560 042
REPRESENTED BY DR. CHANDRASHEKHAR
HARIHARAN
2. DR. CHANDRASHEKHAR HARIHARAN
DIRECTOR,
M/S. BIODIVERSITY CONSERVATION
INDIA PRIVATE LIMITED
ZED HOMES, NO.37/1-1,
AGA ABBAS ALI ROAD,
BANGALORE-560 042.
3. M/S. KANCHAN KAUR
DIRECTOR





M/S. BIODIVERISTY CONSERVATION
INDIA PRIVATE LIMITED,
ZED HOMES, NO.37/1-1,
AGA ABBAS ALI ROAD,
BANGALORE-560 042.

4. MR. SANJAY RAMANUJAM
DIRECTOR,
M/S. BIODIVERSITY CONSERVATION
INDIA PRIATE LIMITED
ZED HOMES, NO.37/1-1,
AGA ABBAS ALI ROAD,
BANGALORE-560 042.

...PETITIONERS

(BY SRI. SANKET M YENAGI, ADVOCATE (through VC))

AND:

1. M/S. VISTA ITCL (INDIA) LIMITED
(FORMERLY KNOWN AS M/S IL & FS TRUST
COMPANY LIMITED),
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT,
HAVING ITS REGISTERED OFFICE AT IL & FS
FINANCIAL CENTRE,
PLOT NO.C-22, G BLOCK,
7TH FLOOR, BANDRE KURLA COMPLEX,
BANDRA (EAST), MUMBAI-400 051

REPRESENTED BY ITS AUTHORIZED PERSON
MR/MRS AMIT GURBANI.

...RESPONDENT

(BY SRI. MANU KULKARNI, ADVOCATE FOR
SRI MADHUR A. KALYAN SHETTY, ADVOCATE)



THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ORDER DATED 05.11.2018, PASSED BY THE COURT OF XXVII ACMM, BENGALURU, TAKING COGNIZANCE AGAINST THE PETITIONERS HEREIN FOR THE OFFENCES P/U/S 138 OF THE N.I.ACT AND ISSUING SUMMONS TO THE PETITIONERS HEREIN BY REGISTERING THE CASE IN C.C.NO.30012/2018, IN THE INTEREST OF JUSTICE AND EQUITY, ETC.

IN CRL.P.NO.3273/2019

BETWEEN:

1. M/S. BIODIVERSITY CONSERVATION
INDIA PRIVATE LIMITED
NO.31/1, 2ND MAIN ROAD,
VYALIKAVAl, NEAR BASHYAM CIRCLE,
BANGALORE-560 003.
REPRESENTED BY DR. CHANDRASHEKHAR HARIHARAN.

2. DR. CHANDRASHEKHAR HARIHARAN
DIRECTOR,
M/S. BIODIVERSITY CONSERVATION
INDIA PRIVATE LIMITED
NO.31/1, 2ND MAIN ROAD,
VYALIKAVAl,
NEAR BASHYAM CIRCLE,
BENGALURU-560 003.



3. MS. KANCHAN KAUR
DIRECTOR,
M/S. BIODIVERSITY CONSERVATION
INDIA PRIVATE LIMITED
NO.31/1, 2ND MAIN ROAD,
VYALIKAVAL, NEAR BASHYAM CIRCLE,
BENGALURU-560 003.

4. MR. SANJAY RAMANUJAM
DIRECTOR,
M/S. BIODIVERSITY CONSERVATION
INDIA PRIVATE LIMITED
NO.31/1, 2ND MAIN ROAD,
VYALIKAVAL, NEAR BASHYAM CIRCLE,
BANGALORE - 560 003.

...PETITIONERS

(BY SRI. SANKET M. YENAGI, ADVOCATE (through VC))

AND:

1. M/S. VISTRA ITCL (INDIA) LIMITED
(FORMERLY KNOWN AS M/S IL & FS TRUST
COMPANY LIMITED),
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT,
CORPORATE IDENTITY NUMBER
U66020MH1995PLCO95507,
HAVING ITS REGISTERED
OFFICE AT IL & FS FINANCIAL CENTRE,
PLOT NO.3-22, G BLOCK,
7TH FLOOR, BANDRA KURLA COMPLEX,
BANDRA (EAST), MUMBAI-400 051.



HAVING ITS BRANCH OFFICE AT
A1-LATHEEF, 1ST FLOOR,
#2 UNION STREET, OFFICE
INFANTRY ROAD
BENGALURU-560 001
REPRESENTED BY ITS
AUTHORIZED PERSON
MR. SUKUMAR ARUNACHALAM.

...RESPONDENT

(BY SRI. SIDDHARTH DESAI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ORDER DATED 26.12.2016, PASSED BY THE COURT OF XXVII A.C.M.M., BANGALORE TAKING COGNIZANCE AGAINST THE PETITIONERS HEREIN FOR THE OFFENCES P/U/S.138 OF N.I.ACT AND ISSUING SUMMONS TO THE PETITIONERS HEREIN BY REGISTERING THE CASE IN C.C.NO.28465/2016, IN THE INTEREST OF JUSTICE AND EQUITY, ETC.

THESE PETITIONS, COMING ON FOR FURTHER HEARING THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN



ORAL ORDER

1. The aforementioned criminal petitions are filed with the following prayers:

(a) The prayers in CrI.P.No.4086/2019 read as under:

"(A) To quash the order dated 05.11.2018, passed by the Court of XXVII ACMM, Bangalore, taking cognizance against the petitioners herein for the offences punishable under Section 138 of NI Act and issuing summons to the petitioners herein by registering the case in CC No.30012/2018, in the interest of justice and equity.

(B) To quash the proceedings in CC NO.30012/2018, on the file of Court of XXVII ACMM, Bangalore, in the interest of justice and equity.

(C) To pass such other orders/directions deem fit in the facts and circumstances of the case, in the interest of justice and equity."

(b) The prayers in CrI.P.No.3273/2019 read as under:

"(A) To quash the order dated 26.12.2016 passed by the Court of XXVII ACMM, Bangalore, taking cognizance against the petitioners herein for the offences punishable under Section 138 of NI Act and issuing summons to the petitioners herein by registering



the case in CC No.28465/2016, in the interest of justice and equity.

- (B) To quash the proceedings in CC NO.28465/2016, on the file of Court of XXVII ACMM, Bangalore, in the interest of justice and equity.*
- (C) To pass such other orders/directions deem fit in the facts and circumstances of the case, in the interest of justice and equity."*

2. Both the criminal petitions are taken up together for consideration as both pertain to the same transaction.

3. An agreement regarding Debenture Trust Deed has been created between M/s. IL&FS Trust Company Limited, which is the Debenture Trustee, which is now succeeded to by the respondent herein and M/s. BCIL Realty Private Limited, which is the Debenture Issuer and Dr. Chandrashekhar Hariharan & Mrs. Kanchan Kaur, who are the promoters & petitioner nos.2 and 3 herein and M/s. Biodiversity Conservation India Private Limited, who is the Guarantor and petitioner no.1 herein. As per the terms of the agreement, an escrow account was created in



the name and style of M/s. BCIL Realty Private Limited escrow account bearing No.00410350000182 and the respondent was authorized to handle the said account. As per the terms, petitioner no.1-Guarantor issued the following four cheques in favour of M/s. BCIL Realty Private Limited, the details of which are as follows:

1. Cheque bearing No.000417 dated 13.06.2017 for a sum of Rs.5,82,00,000/-.
 2. Cheque bearing No.000418 dated 19.06.2017 for a sum of Rs.5,82,00,000/-.
 3. Cheque bearing No.000415 dated 27.06.2017 for a sum of Rs.3,90,00,000/-.
 4. Cheque bearing No.000412 dated 22.08.2016 for a sum of Rs.2,60,00,000/-
4. The respondent, who was authorized to operate the account, deposited the same for realisation. However, they have been dishonoured for insufficiency of funds.
5. As per the terms of the agreement, the respondent was required to realise the said cheques and pay the same



in turn to the debenture holder, which is M/s. Bennett Property Holdings Company Limited ('BPHCL' for short).

6. As contemplated under Section 138 of the Negotiable Instruments Act, 1881 ('the Act' for short), the respondent/payee issued a notice dated 24.08.2017 in respect of three cheques bearing Nos.000417, 000418 and 000415 to petitioner no.1 and its Directors (petitioner Nos.2 to 4) demanding payment of the amounts mentioned in the said cheques. However, while demanding the said payment, the respondent has demanded that the amounts be paid to BPHCL. The relevant paragraph in the notice reads as under:

"7. In view of the aforesaid, we as the Debenture Trustees do hereby call upon you and demand you to pay to BPHCL the aforesaid amount of INR 15,54,00,000/- being the amount of the said dishonoured cheques by pay-order or bank-draft or cash within 15 days of receipt of this notice, failing which, we shall be constrained to institute legal proceedings against you under the provisions of section 138 of the Negotiable Instruments Act, 1881, without any further notice to you."



7. In respect of the other cheque bearing No.000412, a notice dated 07.09.2016 is issued, wherein also it has been demanded that the amounts be paid to BPHCL. The relevant paragraph in the notice reads as under:

"7. In view of the aforesaid, we as the debenture trustees do hereby call upon you and demand you to pay to BPHCL the aforesaid amount of INR 2,60,00,000/- being the amount of the said dishonored cheque by pay-order or bank-draft or cash within 15 days of receipt of this notice, failing which, we shall be constrained to institute legal proceedings against you under the provisions of section 138 of the Negotiable Instruments Act, 1881, without any further notice to you."

8. Nowhere in the said notices, the respondent has demanded that the payments should be made to the respondent-Company.

9. The petitioners, in spite of receipt of the said notices, did not make any payments. Hence, the respondent filed two private complaints before the jurisdictional Magistrate under Section 138 read with Section 141 of the Act. The



learned Magistrate has taken cognizance in both the cases. Aggrieved by the same, the present petitions are filed.

10. In the meanwhile, insolvency proceedings has been initiated against petitioner no.1-company and the same is said to be pending and an Official Liquidator is said to have been appointed.

11. Apart from other grounds, learned counsel for the petitioners submits that the notices issued by the respondent-company are not in conformity with Section 138 of the Act and they are defective. Similarly, it is submitted that the complaints filed by the respondent are also not in conformity with Section 138 of the Act and are defective. It is submitted that Section 138 of the Act mandates the payee to demand that the amounts defaulted should be paid to him and not to a third party.

12. The relevant portion of the notice is as mentioned in paragraph Nos.6 and 7 supra. The prayers made in both the complaints are identical and are as follows:



(a) The prayers in the complaint insofar as it relates to Crl.P.No.4086/2019 read as under:

- "a. Direct all the Accused to pay M/s Bennett Property Holdings Company Limited (BPHCL) a sum of Rs.15,54,00,000/- (Rupees Fifteen Crores Fifty Four Lakhs only) and award compensation to a tune of double the Cheque amount.*
- b. Punish all the Accused for the offence committed under Section 138 of the Negotiable Instruments Act.*
- c. Pass such other orders as deemed just and fit in the circumstances of the case and in the ends of Justice."*

(a) The prayers in the complaint insofar as it relates to Crl.P.No.3273/2019 read as under:

- "a. Direct all the Accused to pay M/s Bennett Property Holdings Company Limited (BPHCL) a sum of Rs.2,60,00,000/- (Rupees Two Crores Sixty Lakhs only) and award compensation to a tune of double the Cheque amount.*
- b. Punish all the Accused for the offence committed under Section 138 of the Negotiable Instruments Act.*



c. Pass such other orders as deemed just and fit in the circumstances of the case and in the ends of Justice."

13. As can be seen from the above, the payee in the instant case is the respondent, but a demand has been made to pay the amounts to BPHCL, the debenture holder or the beneficiary as per the terms of the agreement between the parties.

14. Per contra, the respondent contended that the petitions are not maintainable insofar as it relates to petitioner no.1 is concerned, as it is a private limited company and insolvency proceedings have been initiated against petitioner no.1 and an Official Liquidator is already appointed to manage the affairs of petitioner no.1 and only Official Liquidator is entitled to file any petition on behalf of petitioner no.1-Company. It is also contended that under the civil law and as contemplated under the Companies Act, 2013, the respondent is entitled to demand that the amounts due from the petitioners be paid



to the debenture holder or the beneficiary as per the terms of the agreement. This is because as on the date of issuance of the notice under Section 138 of the Act, as per the terms of the agreement entered into between the parties, the amounts to be paid by petitioner no.1-company had to have been transferred to the name of the debenture holder/beneficiary. It is also submitted that the respondent is only a Debenture Trustee, which was entitled to operate the escrow account and was to receive the money in trust for the benefit of the beneficiary, and thereafter, transfer the same in the name of the beneficiary. For the said reason, it is submitted that the demands made in the notice as well as the prayers made in the complaints are valid and it is prayed that the criminal petitions be dismissed.

15. The question that arises for consideration in the instant petitions is whether under the provision of Section 138 of the Negotiable Instruments Act, 1881, can a payee make a demand for payment of the amount for



which the cheque was dishonoured in favour of a third party without making a demand for payment of the same in his favour?

16. Section 138 of the Act 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 provisions 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 or other liability" means a legally enforceable debt or other liability."

17. Under the given facts and circumstances of the case, proviso (b) of Section 138 of the Act, is required to be interpreted. The said provision requires the payee to make a demand for payment of the amount of cheque by giving a notice in writing to the drawer of the cheque. It does not contemplate issuance of the notice for payment of the money which may be due but which is not part of the cheque and it also does not contemplate issuance of notice for repayment of the amounts due to a third party. A complaint under Section 138 of the Act can be



maintained by the payee or the holder in due course against the person who has issued the cheque and in case of a company, the persons responsible for functioning of the company. It does not contemplate a complaint being filed by a third party against the drawer of the cheque nor does it contemplate impleading any third party as an accused.

18. Proceedings under Section 138 of the Act and recovery of amounts due are two separate proceedings and the payee can maintain both simultaneously. Proceedings under Section 138 of the Act does not preclude the payee from maintaining a civil suit for recovery of money. To prevent unjust enrichment, subsequently, the courts may take into consideration the amounts recovered in one proceeding while passing appropriate orders in the other proceedings. Civil proceedings are much wider and the rights of all the connected persons in an agreement can be agitated in one proceeding by making them parties to the said proceeding.



However, the same is not the case under the proceedings initiated under Section 138 of the Act. Further, it is a technical offence and the parties are required to conform to the rigor of the provisions of the Negotiable Instruments Act in order to successfully initiate the proceedings. Thus, when a notice is issued under Section 138 of the Act for dishonour of cheque, the payee or the holder in due course is required to make a demand in the notice that the cheque amount be paid to him by the drawer of the cheque and in case of the cheque being issued on behalf of a Company, the amount be paid by the persons responsible for functioning of the Company, within the time stipulated, to the payee or the holder in due course, as the case may be. Similarly, in the case of the complaint, the complainant is required to pray for payment of the cheque amounts in his favour. The payee can pray for compensation to be paid to him or pray for punishing the accused in terms of Sections 138/141 of the Act. But, it cannot pray that the accused be directed to make



necessary payments to a third party who is not a party to the proceedings at all. Even in civil law, a person whose rights are affected is required to file the necessary suit to enforce his right and recover the amounts. Thus, for the aforementioned reasons, I am of the opinion that the notices issued by the respondent on account of dishonour of the cheques under Section 138/141 of the Act are not valid and the complaints filed pursuant thereto are also not valid.

19. Insofar as it relates to the first contention urged by the respondent, it is a settled proposition of law that in case of a Company, when an official liquidator is appointed, the proceedings against the company shall be subject to the result of the proceedings under the Insolvency and Bankruptcy Code, 2016. However, the proceedings under Section 138 of the Act can lie against its Directors and persons responsible for functioning of the Company irrespective of the Official Liquidator being appointed. However, the same is of no consequence in the



instant case as the notices issued under Section 138 of the Act itself are held to be bad.

20. Hence, the following:

ORDER

(i) The criminal petitions are allowed;

(ii) The proceedings in C.C.No.30012/2018 and C.C.No.28465/2016 pending on the file of XXVII Additional Chief Metropolitan Magistrate, Bengaluru against petitioner Nos.2 to 4 herein stand quashed;

(iii) The petitioners are given liberty to have the bail bonds cancelled before the trial court by moving the necessary application.

SD/-
(M.I.ARUN)
JUDGE

hkh.
List No.: 1 Sl No.: 38