

Bombay High Court Rajiv Banga vs L And T Finance Company on 3 December,
2010 Bench: V.M. Kanade 1

(WP 1238 of 2010 with cri.
appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235,
1236,1237,1238 of 2010, with cri wp. 1239 of 2010)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1238 OF 2010

Rajiv Banga ...Petitioner

vs

L and T Finance Company
Limited and Anr. ig ...Respondents

WITH
CRIMINAL APPLICATION NO.1229 OF 2010

WITH
CRIMINAL APPLICATION NO. 1230 OF 2010

WITH
CRIMINAL APPLICATION NO.1231 OF 2010

WITH

CRIMINAL APPLICATION NO. 1232 OF 2010

CRIMINAL APPLICATION NO. 1233 OF 2010
WITH
WITH

CRIMINAL APPLICATION NO.1234 OF 2010
WITH
CRIMINAL APPLICATION NO.1235 OF 2010
WITH
CRIMINAL APPLICATION NO.1236 OF 2010

CRIMINAL APPLICATION NO.1237 OF 2010
WITH

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(WP 1238 of 2010 with cri.
appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235,
1236,1237,1238 of 2010, with cri wp. 1239 of 2010)

CRIMINAL APPLICATION NO.1238 OF 2010
WITH

Sachin Shah and Ors. ...Applicants

Vs.

L and T Finance Limited and

Anr. ig ...Respondents

WITH

CRIMINAL WRIT PETITION NO.1239 OF 2010

Hardeep Singh Bedi and

Ors.Petitioners

Vs.

L and T Finance Company

and Anr.Respondents

Mr. A.P. Mundargi, Sr. Counsel with Mr. Niranjan Mundargi with Ms. Renuka R. Laxmeshwar i/b. Prashant Gawali for the Petitioners Mr.D.R. More -APP for the State Mr.Anand Poojari i/b. Mrs. S.I. Joshi i/b. Mr. S.I.Joshi & (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235,

1236,1237,1238 of 2010, with cri wp. 1239 of 2010) Co. for Respondent No.1 CORAM: V.M. KANADE J. DATED: 3RD DECEMBER, 2010 P.C.:- 1. Heard. 2. Applicants/petitioners are challenging the order of issuance of process passed by the learned Metropolitan Magistrate's 12th Court, Bandra, Mumbai in complaints filed by Respondent No.1 under section 138 of the Negotiable Instruments Act. Since the number of cheques were dishonoured, separate complaints were filed. The subject matter of complaints and grounds on which the order of process is challenged being the same, all these applications along with the two Writ Petitions can be disposed off by a common judgment. 3. Brief facts are as under:- 4. A loan-cum-hypothecation agreement dated 24/1/2008 was executed between IDEB Projects Pvt. Ltd, which is arrayed as accused No.1, and L. & T. Finance Limited, Respondent No.1 herein. In the complaint, it is alleged that (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) the cheques which were issued for repayment of the said loan were dishonoured after they were presented by the complainant in their bank and upon non-payment of the said amount which was due and payable under the agreement, after service of notice, complaint was filed under section 138 of the Negotiable Instruments Act. Applicants/Petitioners have challenged the order of issuance of process on the following grounds. (i) It was submitted that the 12th Metropolitan Magistrate's Court, Bandra did not have jurisdiction to try and decide the said complaint since the entire cause of action had arisen at Bangalore, the cheques were issued at Bangalore and the Bank of the borrower is situated at Bangalore. Clause 3.2 of the loan-cum-hypothecation agreement clearly stipulated that the payment of loan installments and other charges due under the said agreement were payable by the borrower to the lender at the Corporate Office or such other address specified in the schedule to the agreement. It was, therefore, submitted that the entire cause of action had arisen at Bangalore. It was submitted that merely because the (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) notice dated 30/3/2009 was issued from Bandra, jurisdiction was sought to be imparted on the court at Bandra. It was submitted that in view of the judgment of the Supreme Court in Harman Electronics (P) Ltd & Anr. vs. National Panasonic (India) Ltd.1 merely because notice was issued from Mumbai it would not confer jurisdiction on Mumbai Court. (ii) It was then submitted that the complainant mechanically reproduced ingredients of section 141. It was

submitted that specific role of the

applicants/petitioners was not mentioned in the complaint and, therefore, in view of the decision of the Apex Court in National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another², no case was made out against the applicants/petitioners and on that ground the order of issuance of process was liable to be set aside qua the applicants/petitioners. A distinction was also sought to be made in respect of the judgment of the Delhi High Court

in Anu 1 2009(1) ALL MR 479 2 1(2010) SLT 593 = (2010) 3 SCC 330 (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) Ahuwalia & Ors vs. Bennett Coleman Company Limited & Anr.1 and it was argued that the Delhi High Court had relied on para 5 of the decision of the Supreme Court in National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another2, as a distinguishing factor for the purpose of ascertaining sufficiency of averments for the purpose of sustaining a prosecution under the deeming fiction arising under section 141 of the Negotiable Instruments Act. (iii) It was then submitted that there was non-compliance of the mandate of the Criminal Procedure Code. It was submitted that in view of the provisions of section 202 of the Cr.P.C, since the applicants/petitioners were residing outside the jurisdiction of Mumbai Court i.e at Bangalore, the learned Magistrate ought to have postponed the issuance of process and should have held an inquiry under section 202. It was submitted that the mandatory provisions of section 202 of the 1 Order of Delhi High Court in CRI. M.C. 1286/2010 dated 23/4/2010. 2 1(2010) SLT 593 = (2010) 3 SCC 330 (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) Cr.P.C. not being followed, the order of issuance of process was vitiated and was liable to be set aside. It was also submitted that the applicants/petitioners had informed the complainant that the applicants/petitioners were non-executive Directors of IDEB Projects Pvt. Ltd. and were not responsible for dishonour of cheques. It was submitted that in view of this reply which was given by the applicants/petitioners-company, the learned Magistrate was duty bound to hold an inquiry under section 202. (iv) It was then submitted that order of issuance of process was also vitiated since the verification statement of the complainant was recorded under section 200 of the Cr.P.C. in a cyclostyled format and in view of the legislative intent of section 200 as well as the decision of the High Court in Amarnath Baijnath Gupta & Anr. vs. Mohini Organics Pvt. Ltd & Anr.1, the said order of issuance of process was liable to be set aside. 1 2009 ALL MR (Cri) 184 (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) (v) It was submitted that the applicant No. 4 was appointed as alternate Director to applicant No.1 and applicant No.5 was appointed as alternate Director to applicant No.1. It was submitted that the alternate Director was appointed during absence of the original Director and is required to vacate his office when the original Director returns and, therefore, both the original Director and alternate Director should not be simultaneously prosecuted. (vi) Lastly, it was submitted that pursuant to the investment made by Samsara India IDEB Investments, applicants/petitioners were appointed with IDEB Projects Pvt. Ltd. as non-executive Directors and subsequently resigned as Directors of the Company. It was submitted that the company complied with the procedural requirements under the Companies Act and submitted Form No.32 to the Registrar of Companies and, therefore, they could not have been prosecuted. (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) 5. On the other hand, the learned Counsel ap-

pearing on behalf of Respondent No.1/complainant submitted that Respondent No.1 has its registered office at L. & T. House, Ballard Estate, Mumbai and its Corporate Office is situated at 3B, Laxmi Towers, C-25, G-Block, Bandra-Kurla Complex, Bandra (East), Mumbai 400 051. It was submitted that the demand notice dated 30/03/2009 was issued to the accused through their advocate at their Corporate Office. It was submitted that in view of clause 3.2 of the loan-cum- hypothecation agreement, the loan installment and other charges and monies due under the agreement were payable to the lender at the Corporate Office. It was submitted that in view of the specific agreement, the applicants/petitioners had agreed to make payment at the Corporate Office at Mumbai. Secondly, it was submitted that the statutory notice was issued from time to time and, thirdly, it was submitted that Respondent No.1 had its registered office at Mumbai and, therefore, Mumbai Court had jurisdiction to try and entertain the complaint. Reliance was placed on the judgment of the Division Bench of this Court in Mrs. Preetha S. Babu Vs. Voltas & Anr. and more particularly paragraphs 4 and 34. 6. So far as the averments in the complaints are 1 2010 ALL MR (Criminal) 1025 (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) concerned, it was submitted that specific averments were made in para 2 and 7 of the complaints in regard to the applicants/petitioners being in charge and responsible for the conduct and business of IDEB Projects Pvt. Ltd. It was submitted that other grounds were pertaining to disputed questions of fact which could be decided only in the trial after recording of evidence was over. 7. After having given the thoughtful consideration to the submissions made by the learned Counsel for the applicants/petitioners and the learned Counsel for the Respondent No.1/complainant, in my view, submissions made by the learned Counsel for the applicants/petitioners cannot be accepted for the following reasons. 8. The complainant is a company registered under the Companies Act and is carrying on business of providing on lease various vehicles, plants, machinery, providing long term/short term loans against security and also for providing loans for the purchase of Tractors etc. In the complaint, it is alleged by the complainant that the accused No.1 approached the complainant for loan and the complainant agreed to the said request of the accused. The accused in their capacity as borrowers had entered into loan-cum- hypothecation agreement and also executed certain loan documents with the complainant on various terms and (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) conditions contained in the said documents. It is submitted that towards partial discharge of aforesaid liability, three cheques were issued for a total amount of Rs 12,65,883.00. The said cheques, however, were dishonoured after they were presented by the complainant in their bank. The demand notice was issued dated 30/03/2009 through their advocate from their Corporate Office at Mumbai which was duly served on the applicants/petitioners. However, on non- payment of the amount due within 15 days from the date of service of notice, complaints were filed. 9. So far as the first ground regarding jurisdiction of the Bandra Court is concerned, it is an admitted position that the complainant has its registered office

at Mumbai and its Corporate Office at Bandra-Kurla Complex. Clause 3.2 of the loan-cum-hypothecation agreement reads as under:- “3.2 All payments of the loan installments and other charges and moneys due under this Agreement shall be payable by the Borrower to the Lender at the Corporate Office, or at such other addresses as may be specified in the Schedule shall deemed to have been paid on the date on which the amounts thereunder are realized.” (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) Both the learned Counsel for the applicants/petitioners as well as Respondent No.1 - complainant relied on this clause. 10. Mr. Mundargi, the learned Counsel appearing on behalf of the applicants/petitioners submitted that in view of the said clause, it was necessary to look at the schedule of the said loan-cum-hypothecation agreement. It was submitted that the schedule being signed at Bangalore, it was clear that payments could also be made at Bangalore and, therefore, the Bangalore Court alone had jurisdiction to decide the case. 11. On the other hand, the learned Counsel appearing on behalf of the complainant submitted that there was no specific clause in the said schedule as contemplated under clause 3.2 “any other address where the amount due was payable” and, therefore, merely because it was signed at Bangalore, it could not be presumed that the amounts due were payable at Bangalore. It was submitted that therefore the amounts were payable at Corporate Office. 12. There is much substance in the submissions made by the learned Counsel for Respondent No.1/complainant. The said clause clearly stipulates that the payments of the amounts due are to be made at the Corporate Office. There (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) is no specific clause in the schedule referring to any other place where payment could be made and, therefore, from the averments made in the said clause, it is clear that the payments were supposed to be made only at the Corporate Office which is situated admittedly at Bandra-Kurla Complex. The Apex Court in *K. Bhaskaran vs. Sankaran Vaidhyan Balan*¹ has clearly laid down that the complainant can file complaint at any of the five places where the cause of action has arisen. Similarly, Division Bench of this Court in *Mrs. Preetha S. Babu Vs. Voltas & Anr.* has also, after going through the judgments of the Apex Court in *K. Bhaskaran vs. Sankaran Vaidhyan Balan*³, *Harman Electronics (P) Ltd & Anr. vs. National Panasonic (India) Ltd.*⁴, *Ahuja Nandkishore Dongre vs. State of Maharashtra*⁵ and in *Shamsahd Begum vs. B. Mohammed*⁶ has held that the place where the complainant is carrying on his business or is ordinarily residing or if it is a company where its registered office is situated, if a notice demanding payment is issued from such place the court at such place would have jurisdiction to entertain the complaint. In the present case, amount due under the agreement was payable at the Corporate Office at Bandra-Kurla Complex. The notice was sent from the Corporate office situated at Bandra-Kurla Complex. The 1 1999(4) ALL MR 452 (SC) 2 2010 ALL MR (Criminal) 1025 3 1999(4) ALL MR 452 (SC) 4 2009(1) ALL MR 479 5 2006 ALL MR (Cri) 3357 6 2008(6) Bom.C.R. 722(S.C.) (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of

2010) Company has its registered office in Mumbai. The complainant is carrying on business in Mumbai and, therefore, Bandra Court clearly has jurisdiction to try and decide this case. The submission made by the learned Counsel for the applicants/petitioners cannot be accepted. 13. So far as the argument regarding averments in the complaint is concerned, if the complainant has made necessary averments that the applicants/petitioners were in charge and were responsible for the conduct and business of IDEB Projects Private Ltd. and the requisite averments were also made regarding jurisdiction in para 10 of the complaint. In my view, sufficient averments have been made in the complaint for the purpose of invoking provisions of section 141 of the Negotiable Instruments Act. Therefore, there is no substance in the submissions made by the learned Counsel appearing on behalf of the applicants/petitioners. 14. So far as the submission regarding non-compliance of provisions of section 202 of the Cr.P.C. is concerned, this Court in *Bansilal Kabra vs. Global Trade Finance Ltd & Anr.*¹ has, after relying on the judgments of the Apex Court, held that the provisions of section 202 of the Cr.P.C. are directory and not mandatory and, therefore, non-compliance, if any, 1 Cr.Application No.1344/2010 order dated 9/7/2010. (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) of the said provisions would not vitiate the order of issuance of process. 15. So far as the submission regarding improper recording of verification is concerned, the judgment on which reliance is placed by the applicants/petitioners in *Amarnath Baijnath Gupta & Anr. vs. Mohini Organics Pvt. Ltd. & Anr.*¹ has been overruled by the Full Bench of this Court vide its judgment dated 07/12/2010 in *Mr. Rajesh Bhalchandra Chalke vs State of Maharashtra*² In view of the ratio of the said judgment of the Full Bench of this Court, submission made by the learned Senior Counsel appearing on behalf of the applicants/petitioners cannot be accepted. 16. So far as the submission regarding resignation of certain Directors is concerned and the submissions that some Directors are non-executive Directors and some are alternate Directors are concerned, all these submissions being disputed by the complainant, at this stage this Court cannot go into the question of correctness or otherwise of the said submissions of the applicants/petitioners. The Division Bench of this Court in *Suhas Bhand vs. State of Maharashtra*³ in para 33 has observed as under:- 1 2009 ALL MR (Cri) 184 2 Full Bench Judgment of this Court dated 7/12/2010 in WP No.2523/10 a/w WP No. 3478/2010 3 2009 ALL MR (Cri) 2614 (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) “33. A reading of these judgments makes for the following legal propositions with regard to the resignation of a Director of a registered Company:- (i) If the accused in a criminal prosecution under section 138 of the Negotiable Instruments Act produces a certified copy of Form No.32 certified by the ROC and there is no dispute of the factum of his resignation, the accused is entitled to be discharged from the prosecution. (ii) If his resignation is not accepted or admitted by the complainant upon production of the certified copy of Form No.32, the accused would have to prove the truth of the contents of the said certified copy i.e the factum of his resignation. Such accused cannot be

discharged simplicitor upon production of a certified copy of Form No.32. (iii) If the complainant produces any (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) evidence showing the continuance of the accused as Director of the Company after the date of the resignation claimed by him as per the certified copy of Form No.32, produced by him, such accused cannot be discharged simplicitor upon production of such certified copy of Form No.32. He would have to lead evidence to prove the factum of his resignation. Similarly the complainant would be entitled to prove the factum of his continuing as Director. The trial under Section 138 read with Section 141 of the Negotiable Instruments Act would, therefore, proceed.” In view of the ratio of the said judgment, at this stage, it will not be possible to decide the questions of fact regarding resignation of the applicants/petitioners or they being alternate or non-executive Directors. It was also vehemently urged that great hardship would be caused to the applicants/petitioners since the applicants/petitioners are residing at Bangalore and they would be required to attend the Bandra Court at Mumbai which would cause harassment to them. In my view, this grievance can be (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) taken care of by granting exemption to the applicants/petitioners from appearing in the Trial Court. Hence, there is no substance in the submissions made by the learned Counsel appearing on behalf of the applicants/petitioners. 17. The Criminal Writ Petitions and the Criminal Applications are dismissed.ig Interim order is vacated. Hearing of the Trial, however, is expedited. 18. Applicants/Petitioners are exempted from appearing in the Trial Court. Their statement under section 313 of the Criminal Procedure Code may be recorded through their advocate as per the procedure laid down under section 313 sub-clause (5) of the Criminal Procedure Code, provided that they give an undertaking that they will not dispute their identity and correctness of the answers recorded in their statement under section 313 of Cr.P.C. The Trial Court shall follow the procedure laid down under section 313(5) while recording the statement under section 313 and shall follow the guidelines laid down by the Apex Court in Keya Mukherjee vs Magma Leasing Limited and another 1 If the applicants’/petitioners’ counsel remain absent on two dates, exemption granted by this Court may be cancelled by the learned Magistrate by passing appropriate order. 1 (2008) 8 SCC 447 (WP 1238 of 2010 with cri. appln nos.1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236,1237,1238 of 2010, with cri wp. 1239 of 2010) 19. Criminal Writ Petitions and Criminal Applications are accordingly disposed off. (V.M. KANADE, J.)