

Shree Nagani Silk Mills Pvt. Ltd vs L.D Industries Ltd on 2 September, 2025

2025 INSC 1064

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 3821 OF 2025
(Arising out of SLP (Crl.) No.1550/2024)

SHREE NAGANI SILK MILLS PVT. LTD....APPELLANT(S)

VERSUS

L.D. INDUSTRIES LTD. & ORS.

...RESPONDENT(S)

WITH
CRIMINAL APPEAL NO. 3822 OF 2025
(@ SLP (Crl.) No.1551/2024)

CRIMINAL APPEAL NO. 3823 OF 2025
(@ SLP (Crl.) No.1552/2024)

CRIMINAL APPEAL NO. 3824 OF 2025
(@ SLP (Crl.) No.1553/2024)

CRIMINAL APPEAL NO. 3825 OF 2025
(@ SLP (Crl.) No.530/2024)

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CRIMINAL APPEAL NO. 3826 OF 2025

(@ SLP (Crl.) No.1554/2024)

Reason:

CRIMINAL APPEAL NO. 3827 OF 2025
(@ SLP (Crl.) No.1555/2024)

JUDGMENT

MANOJ MISRA, J.

1. Leave granted.

2. These seven appeals arise from identical judgment(s) and order(s) of the High Court of Judicature at Bombay (for short the High Court), dated 5.10.2023, passed on separate petitions, under Article 227 of the Constitution of India, impugning revisional court order(s) emanating from separate complaint(s) filed by the appellant against the respondent(s) under Section 138 of the Negotiable Instruments Act, 1881. As common questions of law and fact arise for our consideration, between same set of parties, these appeals were heard together and are being decided by a common order.

Factual matrix

3. Appellant is the original complainant who had lodged separate complaints, under Section 138 read with Section 141 of N.I. Act, against L.D. Textile Industries (for short the accused company – first respondent) and four others (other respondents) in N.I. Act respect of dishonour of cheques issued by the accused company. Details of those cheques with reference to corresponding SLP (Crl.) No. and complaint number(s) are given in the table below:

Special Complaint Cheque Cheque No. Cheque Leave No. Date Amount (In Petition
Rs.) No. SLP 1164/5/2001 25.04.2001 Cheque No. Rs.

(CRL) No. 1550 of 2024 SLP	1162/5/2001	25.04.2001	Cheque No. 948365	Rs. 20,00,000/-
(CRL) No. 1551 of 2024		25.04.2001	Cheque No. 948367	Rs. 20,00,000/-
		25.04.2001	Cheque No. 948368	Rs. 20,00,000/-
		20.04.2001	Cheque No. 948369	Rs. 20,00,000/-
SLP (CRL) No. 1552 of 2024	1167/5/2001	25.04.2001	Cheque No. 948363	Rs. 20,00,000/-
SLP (CRL) No. 1553 of 2024	1168/5/2001	25.04.2001	Cheque No. 948362	Rs. 20,00,000/-
SLP	1163/5/2001	25.04.2001	Cheque No.	Rs.

(CRL)			948364	20,00,000/-
of 2024				
SLP	1166/5/2001	25.04.2001	Cheque No.	Rs.
(CRL)			948361	20,00,000/-
No. 1554				
of 2024				
SLP	1165/2001	25.04.2001	Cheque No.	Rs.
(CRL)			948366	20,00,000/-
No. 1555		25.04.2001		
of 2024			Cheque No.	Rs.
			948388	1,61,646/-

4. Allegations in each complaint, inter alia, are:

(a) that the accused company, towards part payment for supplies made by the complainant, issued cheque(s) in favour of the complainant; (b) those cheque(s) were deposited for collection but they returned for “insufficient funds” in the drawer’s account; (c) complainant thereafter served notice on all the accused calling upon them to pay to the complainant the cheque amount; (d) despite service of notice, the amount was not paid; and (e) therefore, the accused company including respondents 2 to 5, who were in-charge of and responsible for day-to-day business affairs of the accused company, are liable to be punished for offence punishable under Section 138 read with Section 141 of N.I. Act.

5. Based on the complaint and the affidavit filed in support thereof, the accused were summoned by Magistrate concerned.

6. On being summoned, the accused applied to the learned Magistrate to recall the processes issued against them and prayed that proceedings against them be dropped and they be discharged. In their application, it was claimed that the accused company was not only declared ‘SICK’ by the Board of Industrial and Financial Reconstruction² under the BIFR provisions of Sick Industrial Companies (Special Provisions) Act, 1985³ but it was restrained from disposing of any of its assets without the consent of BIFR. In such circumstances, when a legal embargo was imposed on disposal of its assets, it could not have responded to the demand notice. Therefore, proceedings qua them, under Section 138 of N.I. Act, were not sustainable. In support of its plea, the accused relied on a decision of this Court in M/s. Kusum Ingots & Alloys Ltd. vs. M/s. Pennar Peterson Securities Ltd. and others⁴.

7. The learned Magistrate dismissed the application seeking recall of the processes. Against which, the accused filed a revision before the Court of Session. The revisional court allowed the revision and set aside the order of the learned Magistrate thereby discharging the accused of offences punishable under Section 138 read with Sections 141 and 142 of N.I. Act. Aggrieved by orders of the

revisional court, appellant filed Criminal Writ Petition Nos.767, 768, 769, 770, 776, 777 and 779 of 2005 before the High Court of Judicature at Bombay, which came to be dismissed by impugned order(s) dated 5.10.2023.

SICA (2000) 2 SCC 745

8. Aggrieved therewith, these appeals have been filed.

9. We have heard Sri Ninad Laud for the appellants and Sri Rishi Bhuta for the respondents.

Submissions on behalf of the appellant

10. Learned counsel for the appellant submitted:

(i) Recall of processes is not permissible in view of law laid down by this Court in Adalat Prasad vs. Rooplal Jindal⁵ and Constitution Bench decision In Re:

Expeditious Trial of Cases under
Section 138 of NI Act, 1881⁶.

Therefore, the learned Magistrate was justified in rejecting the recall application. In such circumstances, the revisional court ought not to have interfered with the order of learned Magistrate. Thus, the High Court erred in not correcting the mistake committed by the revisional court.

(ii) High Court misconstrued the law laid down by this Court in Kusum Ingots (supra) where, in paragraph 18, (2004) 7 SCC 338 (2021) 16 SCC 116 it was held that Section 22 of SICA does not create any legal impediment for instituting and proceeding with a criminal case on the allegations of an offence under Section 138 of the N.I. Act against a company or its Directors.

Further, in paragraph 19 of the said judgment, it was clarified that where BIFR has issued a restraint order under Section 22A the Court would have to examine whether proceedings under Section 138 of N.I. Act can be instituted during the period in which the restraint order remains operative. Therefore, such issue would have to be decided on the facts of each case, that is, by taking into account the nature of the restraint order, the date when the cheque is issued and the reason for which it is issued. It was also urged that the restraint order issued by BIFR clearly provided that if the company was running, the current assets could be drawn to the extent required for day-to-

day operations which meant that the embargo was not absolute and if cheques were issued for running day to day operations, the restraint order would not hit the proceedings under Section 138 of N.I. Act.

(iii) Restraint order of BIFR is dated 21.08.2000 whereas the cheques in question were issued in 2001 as is clear from the date on the face of the cheque.

Further, the date on the cheque raises a rebuttable presumption, under Section 118(b) of N.I. Act, that it was issued on the date which the cheque bears. In such circumstances, if the cheque was issued in 2001 to meet day-to-day expenses of the accused-company, the restraint order of BIFR cannot stifle the proceedings under Section 138 of N.I. Act.

11. In a nutshell, the submission of learned counsel for the appellant is that whether the proceedings under Section 138 of N.I. Act are barred on account of restraint order of BIFR, is a mixed question of law and fact which has to be decided on the facts of each case based on the evidence led by the parties. Therefore, restraint order cannot be used to stifle a legitimate prosecution without giving opportunity to the complainant to lead evidence.

Further, the power to recall the summoning order does not exist. Hence, the learned Magistrate's order rejecting the recall application required no interference by the revisional court. In such circumstances, the High Court ought to have corrected the error committed by the revisional court. Submissions on behalf of accused-respondent(s)

12. Per contra, learned counsel for the accused- respondent(s) supported the judgment of the High Court and submitted that the cheques sought to be encashed by the complainant were all post-dated and once the accused company was declared 'SICK' and a restraint order was passed, the complaint proceedings were liable to be quashed and, therefore, order of the revisional court as well as the High Court calls for no interference.

Analysis/ Discussion

13. We have considered the submissions and have perused the materials on record.

14. Before we address the rival submissions, it would be apposite to notice the allegations which are common in all the complaints. In all complaints, it is alleged that cheques were issued in 2001 against supplies made to the accused company. No doubt, a plea has been raised on behalf of accused that those were post-dated cheques. However, the law raises a presumption that every negotiable instrument bearing a date was made or drawn on such date⁷. In such circumstances, to rebut the said presumption, evidence would have to be led. Therefore, at this stage, while dealing with validity of the processes issued, based on complaint allegations and affidavit filed in support thereof, in absence of any evidence led by the accused, it would not be permissible to pre-judge the issue and record a finding that cheque was post-dated.

15. Section 228 of SICA, inter-alia, deals with suspension of legal proceedings etc against a 'SICK'

118. Presumptions as to negotiable instruments.— Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration — that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

22. Suspension of legal proceedings, contracts etc - (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2) Where the management of the sick industrial company is taken over or changed (in pursuance of any scheme sanctioned under section 18), notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law -

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

company. Section 22A9 empowers BIFR to direct the Sick Industrial Company not to dispose of, except with the consent of the Board, any of its assets:

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period) or consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board :

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall

not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer of other authority or of any submission, settlement or standing order and, accordingly, -

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect -

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

22-A - Direction not to dispose of assets - The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets -

(a) during the period of preparation or consideration of the scheme under section 18; and

(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the High Court concerned.

(a) during the period of preparation or consideration of the scheme under Section 18; and

(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of Section 20 and up to commencement of the proceedings relating to the winding up before the High Court concerned.

16. In the instant case, the restraint order passed by BIFR, dated 21.08.2000, extracted in paragraph 10 of the impugned judgment of the High Court, reads thus:

“The company/promoters were directed u/s. 22-A of the Act not to dispose of any fixed or current assets of the company without the consent of the BIFR. In case the company was running, the current assets could be drawn to the extent required for day-to-day operations, proper account of which should be maintained.”

17. The afore-quoted restraint order would indicate that there was no embargo on drawing from the assets of the company to the extent required for day-to-day operations.

18. In the instant case, according to the complaint allegations, the complainant company had made supplies and in lieu thereof the cheques in question were issued. In such circumstances, in our view, as there would be a presumption regarding the date on which those cheques were issued, the question as to whether those cheques were issued for running day-to-day operations of the company is an issue, which would have to be addressed on the basis of evidence led in trial.

19. The decision of this Court in Kusum Ingots (supra) does not propound a complete bar on proceedings against a “SICK” company under Section 138 of N.I. Act. Paragraphs 18, 19 and 20 of Kusum Ingots are relevant, and are reproduced below:

“18. In our considered view section 22 SICA does not create any legal impediment for instituting and proceeding with a criminal case on the allegations of an offence under section 138 of the NI Act against a company or its Directors. The section as we read it only creates an embargo against disposal of assets of the company for recovery of its debts. The purpose of such an embargo is to preserve the assets of the company from being attached or sold for realisation of dues of the creditors. The section does not bar payment of money by the company or its directors to other persons for satisfaction of their legally enforceable dues.

19. The question that remains to be considered is whether section 22A of SICA affects a criminal case for an offence under section 138 NI Act. In the said section provision is made enabling the Board to make an order in writing to direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets - (a) during the period of preparation or consideration of the scheme under section 18;

and (b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court. This exercise of the power by the Board is conditioned by the prescription that the Board is of the opinion that such a direction is necessary in the interest of the sick industrial company or its creditors or shareholders or in the public interest. In a case in which the BIFR has submitted its report declaring a company as 'sick' and has

also issued a direction under section 22-A restraining the company or its directors not to dispose of any of its assets except with consent of the Board then the contention raised on behalf of the appellants that a criminal case for the alleged offence under section 138 NI Act cannot be instituted during the period in which the restraint order passed by the BIFR remains operative cannot be rejected outright. Whether the contention can be accepted or not will depend on the facts and circumstances of the case. Take for instance, before the date on which the cheque was drawn or before expiry of the statutory period of 15 days after notice, a restraint order of the BIFR under Section 22-A was passed against the company then it cannot be said that the offence under section 138 NI Act was completed. In such a case it may reasonably be said that the dishonouring of the cheque by the bank and failure to make payment of the amount by the company and/or its Directors is for reasons beyond the control of the accused. It may also be contended that the amount claimed by the complainant is not recoverable from the assets of the company in view of the ban order passed by the BIFR. In such circumstances it would be unjust and unfair and against the intent and purpose of the statute to hold that the Directors should be compelled to face trial in a criminal case.

20. Except in the circumstances noted above we do not find any good reason for accepting the contentions raised by the learned counsel for the appellants in favour of the prayer for quashing the criminal proceedings or for keeping the proceedings in abeyance. It will be open to the appellants to place relevant materials in this regard before the learned Magistrate before whom the cases are pending and the learned Magistrate will examine the matter keeping in mind the discussions made in this judgment. We make it clear that we have not considered the question whether in the facts and circumstances of a particular case Section 138 NI Act is attracted or not, for that is a question to be considered by the Court at the appropriate stage of the case in the light evidence on record. The appeals are disposed of on the terms aforesaid.” (Emphasis supplied)

20. A careful reading of the aforesaid extracts from Kusum Ingots (supra) would make it clear that Section 22 of SICA does not create any legal impediment for instituting and proceeding with a criminal case on the allegations of an offence under Section 138 of the N.I. Act against a sick company or its Directors. However, where a direction is issued by BIFR, under Section 22A of SICA, restraining the company or its Directors not to dispose of any of its assets except with consent of the Board, whether a criminal complaint for the alleged offence under Section 138 N.I. Act can be instituted during the period in which the restraint order remains operative, is a plea which would have to be considered, and whether that plea is to be accepted or not will depend on the facts and circumstances of the case.

21. In Southern Steel Ltd. and Others vs. Jindal Vijayanagar Steel Ltd.¹⁰, this Court had an occasion to consider whether proceedings against a company, under Sections 138 and 141 of N.I. Act, should be interdicted only because the company has been declared ‘SICK’ under SICA. In the said case, the accused-company, after being declared ‘SICK’, in lieu of purchases made from the complainant, had issued a cheque which got dishonoured. Those purchases were made holding out that goods will be paid for. On non-payment of cheque amount, despite notice, the complainant initiated criminal proceeding against the accused-company under Section 138 of N.I. Act. Aggrieved by the proceeding under Section 138 of N.I. Act, accused-company filed petition under Section 482 of the Code of Criminal Procedure, 1973¹¹. The High Court dismissed the petition. Thereafter, the

accused-company approached the trial court and sought discharge, under Section 258 of Cr.P.C., by placing order passed by BIFR under Section 22A. The trial court dismissed the application. The accused, thereafter, approached the (2008) 5 SCC 762 Cr.P.C.

High Court. The High Court dismissed the application and refused to quash the proceedings. Aggrieved therewith, the accused approached this Court by placing reliance on Kusum Ingots (supra). Dismissing the appeal, this Court held:-

“9. According to the High Court, admittedly the purchase orders in question were entered into and the purchases were made by the appellants with full knowledge of the proceedings that the company was declared sick under the SICA, the appellants clearly all through gave the impression to the respondent company that the outstanding amount towards the purchase of the goods would be shortly cleared. The fact that the purchases were made with the clear promise to repay could not be disputed by the appellants. The Directors had in fact issued the cheques for discharging their liability with the full knowledge, would not only clearly show that there was an undisputed debt, but would also show that, right from the inception, the appellants in fact had no intention of paying the amount for the purchases made by them. The intention of the appellants can be gathered by their subsequent acts, conduct and behaviour of taking a shelter under the provisions of SICA. Hence, the appellants are not entitled to any indulgence of this court under its extraordinary jurisdiction under Article 136 of the Constitution. The appellants had lost their total credibility because of their conduct. When the appellant company was declared sick, then without disclosing this fact the appellants ought not to have made huge purchases from the respondent company. Ultimately, the appellant company did not pay for the purchases. This clearly indicates that the appellants had no intention of making payment of the purchases made by it.”

22. Legal principles deducible from the decisions above, inter alia, are, (a) there is no embargo on filing a complaint under Section 138 of N.I. Act against a ‘SICK’ company; (b) even if there is a restraint order under Section 22A of SICA, the nature of the restraint order and the facts of that case would have to be considered before taking a decision whether the proceeding under Section 138 could continue or not;

and, (c) the appropriate stage for taking such a decision would, ordinarily, be after parties have led their evidence.

23. In the instant case, the restraint order under Section 22A of SICA did not restrain the accused-company to draw on its assets to meet its day-to-day operations and, according to the complaint allegations, the cheques in question were issued to discharge the liability of the accused-company against supplies made by the complainant company. In such circumstances, the revisional court fell in error by recalling the processes and discharging the accused at the threshold of the proceeding and the High Court erred in not correcting the error so committed by wrongly relying on Kusum Ingots & Alloys Ltd. (supra).

24. Besides above, the prayer to recall the processes was not maintainable in view of the decision of this Court in Adalat Prasad (supra), which has been affirmed by a Constitution Bench of this Court In Re: Expeditious Trial of Cases under Section 138 of NI Act, 1881 (supra)¹².

25. For the foregoing reasons, the appeals are allowed. The impugned judgment(s) and order(s) of the High Court as well as of the revisional court are set aside. The proceeding(s) on the complaints of the appellant, under Section 138 read with Section 141 of N.I. Act, shall stand restored on the file of the learned Magistrate. The learned Magistrate shall now proceed in accordance with law and bring the proceedings to its logical end.

26. Pending applications, if any, shall stand disposed of.

.....J. (MANOJ MISRA)J. (UJJAL BHUYAN) New Delhi;

September 02, 2025 24.6. The Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.