of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17-2-1976. Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17-2-1976. It would all depend on the facts and circumstances of each case.

14. Accordingly, we hold that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, *Atia Begum*[1] is not correctly decided.

15. In these matters, however, we are not concerned with the question as to the consequences of filing of a statement by a person under a wrong impression that the vacant land held by him is in excess of ceiling limit if it was not so when he filed a statement. This aspect is left open to be decided in an appropriate case.

16. Before concluding, we wish to place on record our deep appreciation for the able assistance rendered by Mr Raju Ramachandran, Senior Advocate, who on our request very readily agreed to assist the Court as amicus curiae.

17. For the aforesaid reasons, CAs Nos. 3813 of 1996, 7238 and 7239 of 2001 are allowed and CAs Nos. 1149 of 1985 and 10851 of 1996 are dismissed. The parties are left to bear their own costs.

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(BEFORE K.T. THOMAS AND S.N. VARIAVA, JJ.)

M.M.T.C. LTD. AND ANOTHER . . Appellants;

Versus

MEDCHL CHEMICALS AND PHARMA (P) LTD. AND ANOTHER . . Respondents.

Criminal Appeals Nos. 1173-74 of 2001†, decided on November 19, 2001

A. **Negotiable Instruments Act, 1881 — Ss. 138 and 142(a) — Complaint by company — Maintainability — Competence to file — Complaint filed in the name and on behalf of company by its employee without necessary authorisation — Such a complaint, held, nonetheless maintainable — Want of authorisation can be rectified even at a subsequent stage**

B. **Negotiable Instruments Act, 1881 — Ss. 138 and 139 — Complaint pending in trial court — Interference with, by High Court in exercise of its inherent powers — Scope — Held, at this stage High Court could not examine the merits of the complaint and could not, merely because the application did not contain a specific allegation to the contrary, hold that**

† From the Judgment and Order dated 18-12-1998 of the Madras High Court in Crl. OPs Nos. 17210-11 of 1997

the cheques were not issued for any debt or existing liability — Onus to prove the non-existence of a debt or liability lay on the drawer and had to be discharged at the trial — Criminal Procedure Code, 1973, S. 482 — Inherent powers of High Court — Scope of interference with pending complaint in exercise of, restated — Constitution of India, Art. 226 — Quashing of criminal complaint — Propriety

C. **Negotiable Instruments Act, 1881 — S. 138 — Complaint need not allege existing of a subsisting debt or liability against which cheque issued — Burden of proving non-existence of any debt or liability is on the accused, to be discharged at the trial — Prior to that complaint cannot be quashed by High Court under S. 482 CrPC**

D. **Negotiable Instruments Act, 1881 — Ss. 138 and 139 — Stop payment cause of dishonour — Presumption under S. 139 — Applicability — Cheque dishonoured on account of drawer's stop-payment instruction, held does draw the presumption under S. 139 which can of course be rebutted by the drawer at the trial — To escape liability under S. 139 accused has to show that dishonour was not due to insufficiency of funds and there was valid cause, including absence of any debt of liability, for the stop payment — Therefore complaint filed in such a case cannot be quashed before the trial**

Pursuant to a memorandum of understanding, the respondent Company issued two cheques, one dated 31-10-1994 and another dated 10-11-1994, in favour of the appellant Company. Both the cheques when presented for payment were returned with the endorsement "payment stopped by drawer". After issuing notices, the appellant lodged two complaints under Section 138 of the Negotiable Instruments Act through one *L*, the Manager of its regional office. The respondent filed two petitions for quashing of the said complaints. Allowing the petitions the High Court held that the complaints were not maintainable. The High Court further held that the Manager (who had lodged the complaints) and the Deputy General Manager (who was substituted), were merely paid employees of the appellant Company and had not been authorised by the Board of Directors to sign and file the complaint on behalf of the Company or to prosecute the same. It further held that the authorisation in favour of the Deputy General Manager could not cure the defect. Since in the complaint there was no specific allegation of existence of any debt or liability, the High Court further held that the cheques were issued as security and not for any debt or liability existing on the date of issuance. Opposing the appeals, the respondent contended inter alia, that the cheque having bounced on account of stoppage of payment by the drawer and not on account of insufficiency of funds, Section 138 was not attracted. Setting aside the High Court's judgment, the Supreme Court

Held :

The only eligibility criterion prescribed by Section 142 for maintaining a complaint under Section 138 is that the complaint must be by the payee or the holder in due course. This criterion is satisfied as the complaint is in the name and on behalf of the appellant Company. Therefore, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on that ground.

(Paras 11 and 12)

Vishwa Mitter v. *O.P. Poddar*, (1983) 4 SCC 701 : 1984 SCC (Cri) 29; *Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687 : 1998 SCC (Cri) 475, *followed*

The law is well settled that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability. (Para 13)

There is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they had to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability. (Para 17)

Maruti Udyog Ltd. v. *Narender*, (1999) 1 SCC 113; *K.N. Beena* v. *Muniyappan*, (2001) 8 SCC 458 : (2001) 7 Scale 331, *followed*

Even when the cheque is dishonoured by reason of stop-payment instructions, by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. Thus, High Court cannot quash a complaint on this ground. (Para 19)

Modi Cements Ltd. v. *Kuchil Kumar Nandi*, (1998) 3 SCC 249, *relied on*

H-M/24725/CR

Advocates who appeared in this case :

V.R. Reddy, Senior Advocate (Ashok Sharma and V.G. Pragasam, Advocates, with him) for the Appellant;

S.M. Deenadayalan and K.V. Vijayakumar, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2001) 8 SCC 458 : (2001) 7 Scale 331, *K.N. Beena* v. *Muniyappan* 240*a*
2. (1999) 1 SCC 113, *Maruti Udyog Ltd.* v. *Narender* 239*g*
3. (1998) 3 SCC 249, *Modi Cements Ltd.* v. *Kuchil Kumar Nandi* 240*c-d*
4. (1998) 1 SCC 687 : 1998 SCC (Cri) 475, *Associated Cement Co. Ltd.* v. *Keshvanand* 239*a*
5. (1983) 4 SCC 701 : 1984 SCC (Cri) 29, *Vishwa Mitter* v. *O.P. Poddar* 238*f*

The Judgment of the Court was delivered by

S.N. VARIAVA, J.— Leave granted.

2. Heard parties.

3. These appeals are against a judgment dated 18-12-1998. By this common judgment two complaints, filed by the appellants, under Section 138 of the Negotiable Instruments Act have been quashed.

4. The appellant is a Government of India company, incorporated under the Companies Act. The appellant has a regional office at Chennai. The 1st respondent is also a company. The 2nd and 3rd respondents were/are the Directors of the 1st respondent Company. It is stated that the 2nd respondent has now died.

5. The appellant and the 1st respondent entered into a memorandum of understanding dated 1-6-1994. This memorandum of understanding was slightly altered on 19-9-1994. Pursuant to the memorandum of understanding two cheques, one dated 31-10-1994 in a sum of Rs 20,26,995 and another dated 10-11-1994 in a sum of Rs 22,10,156, were issued by the 1st respondent in favour of the appellant. Both the cheques when presented for payment were returned with the endorsement "payment stopped by drawer". Two notices were served by the appellant on the 1st respondent. As the amounts under the cheques were not paid the appellants lodged two complaints through one Lakshman Goel, the Manager of the regional office of the appellant.

6. The respondents filed two petitions for quashing of the complaints. By the impugned order both the complaints have been quashed.

7. At this stage it must be mentioned that the respondents had also issued, to the appellants, four other cheques. Those cheques were also dishonoured when presented for payment. Four other complaints, under Section 138 of the Negotiable Instruments Act, had also been filed by the appellants. Those four complaints had also been lodged by the same Shri Lakshman Goel. In those four cases the respondents filed separate applications for discharge. Those discharge applications were on identical grounds as urged by the respondents in the two petitions for quashing the complaints. The Magistrate accepted the contention and discharged the respondents. The High Court allowed the revision filed by the appellants and set aside the order of discharge. The High Court held, as between the same parties, that the Magistrate had erred in holding that the complaints filed by Lakshman Goel were not maintainable. The High Court held that, at this stage, it was not possible to accept defence that the complainant-appellants were not entitled to present the cheques as the respondents had expected the goods. The High Court restored the four complaints and directed the Magistrate to proceed with the trial in accordance with law. The respondents filed SLPs before this Court which were summarily dismissed.

8. In this case the respondents have taken identical contentions in their petitions to quash the complaints viz. that the complaints filed by Mr Lakshman Goel were not maintainable and that the cheques were not given for any debt or liability. It was pointed out to the learned Judge that, between the same parties and on identical facts, it had already been held that case for discharge was made out. Yet the learned Judge chose to ignore those findings and proceeded to hold to the contrary.

9. In the impugned judgment it has been held that the complaints filed by Mr Lakshman Goel were not maintainable. It was noticed that in those two complaints, at a subsequent stage, one Mr Sampath Kumar, the Deputy General Manager of the appellant was allowed to represent the appellants.

The High Court held that it is only an Executive Director of the Company who has the authority to institute legal proceedings. It is held that the complaint could only be filed by a person who is in charge of or was responsible to the Company. It is held that authorisation must be on the date when the complaint is filed and a subsequent authorisation does not validate the complaint. It is held that the absence of a complaint by a duly delegated authority is not a mere defect or irregularity which could be cured subsequently. It is held that if the record does disclose any authorisation, then taking cognizance of the complaint was barred by Section 142(*a*) of the Negotiable Instruments Act. It has been held that the Senior Manager (who had lodged the complaints) and the Deputy General Manager (who was substituted) had not been authorised by the Board of Directors to sign and file the complaint on behalf of the Company or to prosecute the same. It is held that the Manager or the Deputy General Manager were mere paid employees of the Company. It is then held as follows:

> "Therefore, it is clear that the legal position as crystallised by the rulings is to the effect that a complaint under Section 138 of the Negotiable Instruments Act can be filed for and on behalf of a body such as corporation, who has only artificial existence through a particular mode and when that mode is not followed, any proceedings initiated or any complaint filed will be vitiated from its very inception. In my opinion, here, the complaint is signed and presented by a person, who is neither an authorised agent nor a person empowered under the articles of association or by any resolution of the Board to do so. Hence, the complaint is not maintainable. The taking of cognizance of such a complaint is legally not acceptable. Hence, these two complaints filed for and on behalf of M.M.T.C. Limited against the petitioners herein, which were taken on file in CCs Nos. 3324 and 3325 of 1995 are not maintainable at all and that cognizance of the said complaints ought not to have been taken by the Magistrate."

10. In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque. The two complaints, in question, are by the appellant Company who is the payee of the two cheques.

11. This Court has, as far back as, in the case of *Vishwa Mitter* v. *O.P. Poddar*[1] held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case, the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due

1 (1983) 4 SCC 701 : 1984 SCC (Cri) 29

course. This criteria is satisfied as the complaint is in the name and on behalf of the appellant Company.

12. In the case of *Associated Cement Co. Ltd.* v. *Keshvanand*[2] it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.

13. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored the well-settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability.

14. It is next held as follows:

> "This is a special provision incorporated in the Negotiable Instruments Act. It is necessary to allege specifically in the complaint that there was a subsisting liability and an enforceable debt and to discharge the same, the cheques were issued. But, we do not find any such allegation at all. The absence of such vital allegation, considerably impairs the maintainability."

15. In the case of *Maruti Udyog Ltd.* v. *Narender*[3] this Court has held that, by virtue of Section 139 of the Negotiable Instruments Act, the court has to draw a presumption that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. This Court has held that at the initial stage of the proceedings the High Court was not

2 (1998) 1 SCC 687 : 1998 SCC (Cri) 475
3 (1999) 1 SCC 113

justified in entertaining and accepting a plea that there was no debt or liability and thereby quashing the complaint.

16. A similar view has been taken by this Court in the case of *K.N. Beena* v. *Muniyappan*[4] wherein again it has been held that under Section 139 of the Negotiable Instruments Act the court has to presume, in a complaint under Section 138, that the cheque had been issued for a debt or liability.

17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability.

18. Lastly it was submitted that a complaint under Section 138 could only be maintained if the cheque was dishonoured for reason of funds being insufficient to honour the cheque or if the amount of the cheque exceeds the amount in the account. It is submitted that as payment of the cheques had been stopped by the drawer one of the ingredients of Section 138 was not fulfilled and thus the complaints were not maintainable.

19. Just such a contention has been negatived by this Court in the case of *Modi Cements Ltd.* v. *Kuchil Kumar Nandi*[5]. It has been held that even though the cheque is dishonoured by reason of "stop-payment" instruction an offence under Section 138 could still be made out. It is held that the presumption under Section 139 is attracted in such a case also. The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop-payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus a court cannot quash a complaint on this ground.

20. In this view of the matter, the impugned judgment cannot be sustained and is set aside. The learned VIIth Metropolitan Magistrate, G.T. Chennai is directed to proceed with the complaints against Respondents 1 and 3 in accordance with law. It is made clear that the setting aside of the impugned order will not tantamount to preventing the respondents from taking, at the trial, pleas available to them including those taken herein.

21. The appeals stand disposed of accordingly. There will be no order as to costs.

4 (2001) 8 SCC 458 : (2001) 7 Scale 331
5 (1998) 3 SCC 249