

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1424 OF 2021
(Arising out of SLP (CrI.) No.9077 of 2019)

M/s. NAG LEATHERS PVT. LTD.

Appellant

VERSUS

M/s. DYNAMIC MARKETING PARTNERSHIP,
REP. BY ITS PARTNERS & ANOTHER

Respondents

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 02.04.2019 passed by the High Court of Judicature at Madras in CrI. O.P. No.8869 of 2018.

The appellant preferred aforesaid Criminal Original Petition under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for short) seeking quashing of pending proceedings initiated by the respondents herein under Section 138 of the Negotiable Instruments Act, 1881 ("the Act" for short) on the ground that the debt in question was not enforceable and was only in the nature of a security. The challenge having been negated, the instant appeal has been filed in this Court.

On 25.10.2019, following submission advanced on behalf of the appellant was noted by this Court whereafter notice was

issued in the matter:

"Mr. Nagamuthu, learned senior advocate appearing for the petitioner submits that a moratorium was issued by NCLT, Division Bench, Chennai while dealing with TCP/73/(IB)/CB/2017 vide order dated 10.7.2017 which inter alia prohibited institution of any suit or continuation of pending suit against the corporate debtor and transferring, encumbering, alienating or disposing of by the corporate debtor of any of its assets or any legal rights or beneficial interest therein.

He further submits that the statutory notice under Section 138 of the Negotiable Instruments Act was issued on 21.12.2017 and reply dated 2.1.2018 disclosed the factum about the moratorium.

Learned counsel, therefore, submits that the proceedings under Section 138 of the Negotiable Instruments Act against the Corporate-debtor could not have been instituted."

Considering the issues involved in the matter, by subsequent order dated 17.02.2020, this Court issued notice to the Learned Attorney General for India so that any Law Officer could assist this Court. Pursuant to said order, Mr. Tushar Mehta, learned Solicitor General has appeared and assisted this Court.

During the pendency of the instant matter, the question as to the nature of the liability of a corporate debtor in respect of proceedings initiated under Section 138 of the Act, after the issuance of the moratorium, was considered by a three Judge Bench of this Court in *P. Mohanraj & Others v. Shah Brothers Ispat Private Ltd.*, (2021) 6 SCC

258, and the conclusions drawn by this Court were as under:

"103. In conclusion, disagreeing with the Bombay High Court and the Calcutta High Court judgments in *Tayal Cotton (P) Ltd. v. State of Maharashtra*, 2018 SCC OnLine Bom 2069 : (2019) 1 Mah LJ 312 and *MBL Infrastructions Ltd. v. Manik Chand Somani*, 2019 SCC OnLine Cal 9097 respectively, we hold that a Sections 138/141 proceeding against a corporate debtor is covered by Section 14(1)(a) IBC.

104. Resultantly, the civil appeal is allowed and the judgment under appeal is set aside. However, the Sections 138/141 proceedings in this case will continue both against the Company as well as the appellants for the reason given by us in paras 101 and 102 above as well as the fact that the insolvency resolution process does not involve a new management taking over. We may also note that the moratorium period has come to an end in this case."

In that case, apart from the corporate debtor, certain natural persons who were stated to be in-charge of and responsible for the affairs of the corporate debtor were also arrayed as accused and, as such, the proceedings under Section 138/141 of the Act were allowed to be continued as against such natural persons.

However, in the instant case, the complaint was filed only against the corporate entity and none of the natural persons who were stated to be the in-charge of and responsible for the affairs of the corporate entity were arrayed as accused.

The decision rendered by this Court in *P. Mohanraj*

(*supra*) has since then been followed by another three-Judge Bench of this Court in *Gimpex Private Ltd. v. Manoj Goel*, 2021 SCC Online SC 925 : 2021 (12) SCALE 269.

It must therefore be held that the corporate debtor, namely, the appellant herein cannot now be proceeded against under Section 138 of the Act. Consequently, the proceedings initiated against the appellant deserve to be quashed.

Since no natural person was arrayed as accused, the exception carved out in the decision of this Court in *P. Mohanraj (supra)* does not arise in the instant case.

The appeal is thus allowed. The decision under challenge is set-aside; the Criminal Original Petition preferred by the appellant under Section 482 of the Code is allowed and the proceedings against the appellant are quashed.

In the end, we must express our sincere appreciation and gratitude for the assistance rendered by Mr. Tushar Mehta, learned Solicitor General.

With these observations, the appeal is allowed.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

New Delhi,
November 18, 2021