

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR
(SINGLE BENCH : HON'BLE SHRI JUSTICE ARUN KUMAR SHARMA)**

M.Cr.C.No. 2546/2020

Prabhudas Panjainmal Rice and Dal Mill

Vs.

Avon Trade Link Shakti Nagar, Katni

AND

M.Cr.C.No. 2562/2020

Girdharilal & another

Vs.

Rajkumar Mohani

Shri Alok Vagrecha, learned counsel for the petitioners.

Shri Utkarsh Agrawal, learned counsel for the respondents.

Whether approved for reporting : (Yes / No).

ORDER
(23-09-2021)

As common issue is involved in both these petitions, therefore, they are being disposed of by this common order.

2. These petitions under Section 482 of the Code of Criminal Procedure have been filed by the petitioners for setting-aside order dated 04/01/2020 passed by Judicial Magistrate First Class, Katni in Cheque bouncing case Nos. 168/17 and 144/17 respectively, whereby the trial Court has rejected the examination-in-chief of accused submitted by way of affidavit under Section 145 of the Negotiable Instruments Act, at the stage of defence

evidence. Being dissatisfied with the aforesaid orders, the petitioners have preferred these petitions under Section 482 of the Cr.P.C., 1973.

2. Facts giving rise to these petitions, in shorts, are that the petitioners being accused are facing trial before the Judicial Magistrate First Class, Katni in cheque bouncing case nos. 168/17 and 144/17 respectively. Presently, the case is fixed before the trial Court for recording the defence evidence and the petitioners had submitted their examination-in-chief in the form of affidavits, which were filed under Section 145 of the Negotiable Instruments Act on 29/11/2019 along with the applications for taking the evidence of the accused in the form of affidavits. The trial Court vide order dated 04/01/2020 rejected the applications as well as the affidavits filed by the accused.

3. The petitioners have filed these petitions for setting aside of the aforesaid order on the ground that the trial Court has committed an error of law by relying upon the judgment of Hon'ble apex Court in the case of **Mandvi Co-operative Bank Ltd. V. Manish B. Thakore, 2010(3) SCC 83** and has failed to take note of directions issued by the Hon'ble apex Court in subsequent case of **Indian Bank Association & Ors. Vs. Union of India & Ors., 2014(5) SCC 590** and also **Rakesh Bhai Magan Bhai Banot Vs. State of Gujarat,**

2019(1) Crimes 575; wherein Gujarat High Court has dealt with both the cases cited above and has precisely dealt with the question, whether the trial Court was justified in refusing to take the evidence of accused on oath and has answered the question in affirmative by directing the trial Court to receive the evidence of the petitioner on affidavit. In support of his contentions, learned counsel for the petitioners has placed reliance on a decision of Hon'ble the Apex Court passed in the case of **Indian Bank Association and Ors. Vs. Union of India & Ors., (2014) 5 SCC 590**. Under these circumstances, learned counsel for the petitioners prays for setting aside of the impugned order and for direction of the trial Court to take the affidavits filed by the accused persons in lieu of their examination-in-chief in the interest of justice.

4. On the other hand, learned counsel for the respondents refuting the aforesaid contentions submitted that trial Court has rightly rejected the applications filed by the petitioners relying upon the case of **Mandvi Cooperative Bank Ltd. V. Manish B. Thakore, 2010(3) SCC 83**. In support of his contention, he has placed reliance upon a decision of **Punjab and Haryana High Court** passed in the case of **Rajni Dhingra Vs. Sanjeev Singh, (2019) 4 Civ.CC 817** and also a **Full Bench Decision of Madhya Pradesh High Court** passed in the case of **Jabalpur Bus Operators**

Association & Ors. Vs. State of M.P. & Another in W.P.No.177 and 1629 of 2001 decided on 17.12.2002 and prayed that both the petitions be dismissed.

5. Having considered the contentions of learned counsel for both the rival parties and on minute perusal of the citations given by both the parties, this court finds much force on the contentions advance by learned counsel for the respondents. In the case of **Rajni Dhingra (supra)**, the issue involved in the matter has been dealt with and after taking note of **Indian Bank Association (supra)** and also **Mandvi Cooperative Bank Ltd. (supra)** held that the petitioner being an accused, who is facing trial in complaint under the provisions of Negotiable Instrument Act, is not competent to tender his evidence through affidavit and learned trial Court has not committed any error while declining permission to this effect to the petitioner.

6. Relevant paragraphs no. 5 and 6 of the judgment of **Rajni Dhingra (supra)**, are reproduced here for ready reference as under :-

5. After discussing the law on the point, the Apex Court did not agree with observations of High Court allowing permission to accused to

lead evidence on affidavit and observed in para 52 as follows:-

“52. In light of the above we have no hesitation in holding that the High Court was in error in taking the view, that on a request made by the accused the magistrate may allow him to tender his evidence on affidavit on affidavit and consequently, we set aside the direction as contained in sub-paragraph(r) of paragraph 45 of the High Court judgment. The appeal arising from SLP (Crl.) No. 3915/2006 is allowed.”

6. The above observations of the Apex Court in the case of Mandvi Cooperative Bank Ltd (supra) have not been set aside or dissented in the case of Indian Bank Association (supra), wherein in para 12 a reference was made to above observations as follows:-

“12. The scope of Section 145 came up for consideration before this Court in **Mandvi Cooperative Bank Limited v. Nimesh B. Thakore (2010) 3 SCC 83**, and the same was explained in that judgment stating that the legislature provided for the complainant to give his evidence on affidavit, but did not provide the same for the accused. The Court held that even though the legislature in their wisdom did not deem it proper to incorporate a

word “accused” with the word “complainant” in Section 145(1), it does not mean that the Magistrate could not allow the complainant to give evidence on affidavit, unless there was just and reasonable ground to refuse such permission.”

7. The Apex court in case of **Indian Bank Association (supra)** was dealing with the issue of laying down appropriate guidelines / directions to be followed by the Courts while trying complaints under Section 138 of the Negotiable Instruments Act and the issue before the Apex Court was to ensure expeditious disposal of such cases. Though, reference to observations of the Apex court in case of **Mandvi Cooperative Bank Ltd. (supra)** was made in para 12 of the judgment but as already discussed the law settled by the Apex Court in that cases is clear and has not been set-aside or dissented so far. Even that was not in issue before the Apex Court in case of **Indian Bank Association (supra)**.

8. In view of the aforesaid discussions and in view of the clear proposition of law as laid down in **Mandvi Cooperative Bank Ltd. (supra)** and **Rajni Dhingra (supra)**, the petitioners being accused who are facing trial in complaint under the provisions of

Negotiable Instruments Act, are not competent to tender their evidence through affidavit and learned trial court has not committed any error while declining permission to this effect to the petitioners being accused.

9. Accordingly, aforesaid both petitions being devoid of merit are hereby dismissed.

(ARUN KUMAR SHARMA)
JUDGE

JP/-