

M.Cr.C. No.242/2017

20/02/2017

Shri Ravindra Singh Chhabra, learned counsel for the petitioner.

Shri Vinay Gandhi, learned counsel for the respondent No.2.

ORDER

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') seeking quashment of criminal complaint case no.333/2016 pending before the Court of Additional Chief Judicial Magistrate, Dewas for offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

02. The aforesaid complaint (copy Annexure P/1) has been filed by M/s Agrawal Agency through Proprietor Vishal Agarwal (respondent No.1) against petitioner Asuni Agarwal and 'Gangwal Kirana Store' through its proprietor (respondent No.2) on the basis of averments that cheque dated 21.05.2014 issued under the signatures of the petitioner in favour of respondent No.1 for Rs.91,76,950/- towards legally enforceable liability on being presented before the banker of the petitioner was dishonoured on account of insufficiency of funds and difference in signatures of the drawer. Allegedly, pursuant to dishonour a demand notice was issued, however, the amount under the cheque was not paid, hence, the petitioner as well as respondent No.2 are

liable under Section 138 of 'the Act'.

03. Quashment of the complaint case is sought on the ground that the cheque in question was dishonoured not only because the funds were insufficient but also because the drawer's signature on the cheque differed from the specimen signatures of the drawer. Placing reliance on pronouncement of the apex Court in *Vinod Tanna and another vs. Zaheer Siddiqui and others, (2002) 7 SCC 541*, and the pronouncement of this Court in *Raj Kumar Shukla vs. Subodh Agrahari, 2010(1) MPLJ 179* and *Puma Ispat Trading Private Limited vs. Pramod Agrawal, 2007(II) MPWN 13*, it is contended that Section 138 of 'The Act' which stipulates penal liability of dishonour of cheque and non-payment of money despite demand notice within statutory period is not applicable, where the cheque has been dishonoured because the drawer's signatures differed with the specimen signature.

04. It is further contended that the cheque book of the petitioner containing leaflets from No. 005801 to No. 005810 got misplaced and an information in this regard was made by the petitioner in writing to Police Station Astha, so also to the concerned banker, requesting stop payment. The contention is that one of the cheque of the misplaced cheque book has been misused by respondent No.1 and the signatures of the petitioner has been forged, therefore, the complaint proceedings, being abuse of process of law, deserves to be

quashed.

05. Per contra, it is submitted by Shri Vinay Gandhi, learned counsel for the respondent No.1, that the cheque in question was dishonoured not only because the signatures differed but also because the balance in the account of the drawer was insufficient, therefore, liability under Section 138 of 'the Act' is clearly made out, hence, question of quashment does not arise. It is further submitted that the plea with regard to misplacement of cheque book and misuse of the cheque by forging signature of the petitioner are all matters of evidence which can be examined during trial and not in a petition under Section 482 of 'the Code', therefore, the prayer for quashment is liable to be declined.

06. Heard the learned counsel for the parties and perused the record.

07. The question which needs to be answered in the aforesaid premises is whether a drawer of the cheque can avoid liability, where the cheque is dishonoured by the bank on account of insufficiency of funds, so also on the ground that the drawers' signatures differed from his specimen signatures? The further question would be whether the plea that a leaflet of the misplaced cheque book has been used for fastening liability under Section 138 of 'the Act' can be examined in exercise of jurisdiction under Section 482 of 'the Code'?

08. Dealing with the issue of difference in signatures

of the drawer, the apex Court in the matter of *Vinod Tanna (supra)*, has taken a view that in such a situation, the drawer cannot be held liable under Section 138 of 'the Act' because Section 138 of 'the Act' stipulates liability where the cheque has been dishonoured on account of insufficiency of funds or that the amount exceeds arrangement made with the Bank. It was further held that unless the conditions precedent mentioned in Section 138 of 'the act' are satisfied the said penal provision cannot come into play.

09. The aforesaid proposition of law was considered by the Hon'ble apex Court in *M/S Laxmi Dyechem vs State Of Gujarat & Ors., (2012) 13 SCC 375*. Hon'ble the apex Court referring to its 3 Judge Bench decision in *Modi Cements Ltd. vs. Kuchil Kumar Nandi, (1998) 3 SCC 249*, held that the expression “*the amount of money is insufficient to honour the cheque*” is a genus of which the expression ‘*account being closed*’ is a species. Reference was also made to the decision in *M.M.T.C. Ltd. and another vs. Medchl Chemicals and Pharma (P) Ltd. and another, (2002) 1 SCC 234*, wherein the apex Court in para-19 held as under :

“19. Just such a contention has been negated by this Court in the case of *Modi Cements Ltd. vs. Kuchil Kumar Nandi*. 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.”

10. Further reference was made to 3 Judge Bench decision in *Rangappa vs. Sri Mohan, (2010) 11 SCC 441*, wherein it was held that plea of the drawer of the cheque to put up a probable defense for rebutting the presumption that arises under Section 139 of 'the Act' would justify conviction even when the appellant drawer may have alleged that the cheque in question had been lost and was being misused by the complainant.

11. The apex Court in *M/S Laxmi Dychem (supra)*, clearly held that the expression “amount of money is insufficient” appearing in Section 138 of the Act is a genus

and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus just as and that so also will be the situation where the cheque has been dishonoured on the ground that *‘the signatures do not match’* or that the image is not found. Relevant observations made in this behalf are as under :

“15. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (supra) that the *expression “amount of money is insufficient” appearing in Section 138 of the Act is a genus and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the “signatures do not match” or that the “image is not found”, which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act.* This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in

the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to

qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration.”

12. In view of the aforesaid clear proposition of law, apparently Section 138 of 'the Act' shall be attracted even where the cheque has been dishonoured on the ground that the signatures of the drawer differed.

13. Here it is pertinent to observe that such a view is in consonance with the spirit behind engrafting of Section 138 of 'the Act' which was basically to inculcate faith of the people in transactions made through cheque. Indeed a drawee may not always have knowledge about the standard signatures of the drawee. Rather most of the time it will be quite difficult if not impossible for the drawee to find out whether the signature put on the cheque by the drawer are his

complete signature or they resemble with his standard signatures. An over-smart drawer can indulge in dishonesty simply by putting signatures which differ from his standard signatures kept by the bank and thus befool, the drawee taking shelter under the plea that the cheque was dishonoured because the signatures on the cheque differed with the specimen signatures. This will indeed defeat the very purpose which is sought to be achieved by Section 138 of 'the Act'.

14. In view of the aforesaid, the plea raised on behalf of the petitioner for quashment of the complaint proceedings on the ground that the drawer signatures differed from the specimen signatures does not hold any water and, hence, deserves to be rejected.

15. As regards, plea that the petitioner's cheque book was misplaced and that intimation in this regard was given to the police as well as to the Bank and that one of the leaflets from the cheque book has been misused by the respondent No.1 appears to be quite far-fetched, however, the same being a matter of factual dispute cannot be examined by this Court in exercise of exceptional jurisdiction under Section 482 of 'the Code.

16. In view of the aforesaid, this petition fails and is hereby dismissed.

(Ved Prakash Sharma)
Judge