

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

WRIT PETITION NO.	5339/2021
Parties Name	ATUL SINGH VS. INDIAN OIL CORPORATION
Bench Constituted	Single Bench
Judgment delivered By	HON'BLE SHRI JUSTICE VISHAL DHAGAT
Whether approved for reporting	
Name of counsel for parties	For petitioner: Shri Sankalp Kochar, Advocate For Respondents : Shri Aditya Adhikari, Sr. Advocate with Shri Satish Chand Chaturvedi, Advocate on Caveat.
Law laid down	Provisions under Section 138 of Negotiable Instruments Act, 1881, are not purely criminal in nature but quasi-criminal in nature and imprisonment and fine are provided to fulfill the civil object of paying of debt or civil liability.
Significant paragraph number	Para-9

(O R D E R)
20/07/2021

Petitioner has called in question order dated 5.2.2021 passed Chief Divisional Retail Sales Manager of Indian Oil Corporation.

2. By said order Petroleum Outlet Dealership of M/s Shri Sai Filling Station at Baikunthpur, Tehsil Sirmour, District Rewa was terminated. Order was passed on ground that there was breach of Clause 45 (d) of dealership agreement. As per said Clause, if dealer or any partner in dealership firm or any member of Co-operative Society appointed as dealer thereunder is convicted of a criminal offence, then Corporation shall be at liberty at its discretion to terminate the agreement forthwith.

3. Show cause notice was issued to petitioner by respondent Corporation. Petitioner was convicted under Section 138 of Negotiable Instruments Act, 1881 in Court of Judicial Magistrate First Class, Rewa. Criminal Appeal filed by petitioner was also dismissed vide judgment dated 18.11.2019 in Criminal Appeal No..972/2019. Petitioner has preferred Criminal Revision before this Court bearing Cri. Rev No.570/2020 which is pending for consideration.

4. Learned counsel for the petitioner submitted that agreement dated 1.8.2008 was arbitrarily terminated. Petitioner has been convicted under Section 138 of Negotiable Instruments Act, which is not a heinous case or case involving moral turpitude. Offence under Negotiable Instruments Act is a Civil Law. Negotiable Instruments Act was enacted so that there is trust in commercial transactions and people may pay their debts. In support of his submission, learned counsel for the petitioner has relied on judgment reported in **P. Mohanraj and Others vs. Shah Brothers Ispat Pvt. Ltd.**, 2021 SCC Online SC 152, para-48 which is quoted as under:-

“A perusal of this judgment would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a “civil sheep” in a “criminal wolf’s” clothing, as it is the interest of the victim that is

sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.”

5. Learned Senior Counsel for the respondent supported the order passed by Chief Divisional Retail Sales Manager. It is submitted by him that it has rightly been held that since petitioner is convicted in a criminal case, therefore, his agreement is terminated as per Clause 45 (d) of Dealership Agreement. It is submitted that as per section 138 of Negotiable Instruments Act, 1881 bouncing of cheque has been defined as an offence and is punishable with imprisonment and fine. Proposal was made to amend the said Act and remove the word offence, but same was not done and word is retained in the Act. In view of same, it is submitted by learned Senior Counsel for respondent that dishonour of cheque due to insufficiency of fund is an offence and imprisonment and fine is prescribed as penalty, therefore, proceedings under Negotiable Instruments Act are criminal in nature and dealership agreement has rightly been terminated by respondent Corporation.

6. Heard learned counsel for the parties.

7. Apex Court in the case of **P. Mohanraj and Others** (supra) has reiterated that proceedings under Negotiable Instruments Act are basically civil in nature having criminal colour. Apex Court has defined the proceedings aptly as “*civil sheep in a criminal wolf’s clothing*” and has reiterated the law

laid down. In the case of **Kaushalya Devi Massand vs. Roopkrishore Khore** (2011) 4 SCC 593, it has been held in para-11 as under:-

“Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Indian Penal Code or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones.”

8. Similarly, in **Meters and Instruments Private Limited and Another vs. Kanchan Mehta**, (2018) 1 SCC 560, it has been held that nature of offences under Section 138 of Negotiable Instruments Act is primarily a civil law and 2002 amendment specifically made it compoundable.

9. In view of aforesaid judgment passed by the Apex Court, it is clear that proceedings under Section 138 of Negotiable Instruments Act are civil in nature with criminal overtones.

10. In view of the aforesaid facts and circumstances of the case, impugned order dated 5.2.2021 is quashed. Respondent is directed to allow petitioner to run the Petroleum outlet allotted to him vide agreement dated 1.8.2008.

11. Writ petition stands **allowed**.

(VISHAL DHAGAT)

JUDGE