

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Cr1. M.C. No. 3197/2009**

Reserved on : 23.09.2009
Date of Decision : 29.10.2009

Mr. Abhinav Gupta

.....Petitioner

Through: Mr. M.S. Pannu, Adv.

Versus

State & Ors.

..... Respondents

Through: Mr. Pawan Bahl, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers can be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J.

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. for quashing of the complaint case no. 2002/2001 titled M/s Kundan Rice Mills Ltd. Vs. M/s C.L. International.

2. Briefly stated the facts leading to the filing of the present petition are that M/s Kundan Rice Mills Ltd. respondent herein filed a complaint case against the M/s C.L. International, Sh. Abhishek Gupta, Shri Abhinav Gupta and Sh. Ravinder Gupta claiming him to be the in-charge/manager. It is alleged that the petitioner Abhinav Gupta along with Abhishek Gupta and Ravinder Gupta used to purchase rice from the respondent company and in order to pay the outstanding amount of sell sale price the accused no. 1 to 4 authorized to Mr. Abhinav Gupta

accused no. 3 to sign the cheques. It is alleged that the apart from this liability Mr. Abhinav Gupta, the petitioner, had issued a cheque no. 046162 dated 21.03.2008 for a sum of Rs.6,87,958/- drawn on Bank of India, Overseas Branch, Vijay Building, 17, Bara Khamba Road, New Delhi from the account of M/s C.L. International. It is alleged that the aforesaid cheque on presentation was dishonoured on account of stop payment. The dishonoured cheque was returned along with a memo dated 11th September, 2008 indicating that there were instructions of stop payment. It is alleged that the petitioner was the in-charge of day to day business of the conduct of the firm and is guilty of Section 138 read with section 141 of the Negotiable Instruments Act.

3. I have heard the learned counsel for the petitioner. It is contended that since the cheque has been dishonoured on account of stop payment and not because of insufficiency of funds, therefore, the offence under Section 138 of the Negotiable Instrument Act is not made out and accordingly the petitioner could not have been summoned and the complaint deserved to be quashed. The learned counsel for the petitioner has placed reliance on case titled Bhageerathy Vs V. Beena & Anr. CrI. M.C. No. 473/1992 CrI. L.J. 3946 of Kerala High Court wherein it has been held that if the cheque is dishonour only on the ground of insufficiency of funds or the cheque exceeds the arrangement in the account then only an offence under Section 138 of the Negotiable Instrument Act will be made out. Similar is the

judgment of another Single Judge of the Kerala High Court in case titled S. Ashok & Anr. Vs. Sri Vasudevan Moosad 1993 CrL. L.J. 2486.

4. I have carefully considered the submissions of the learned counsel for the petitioner and gone through the judgments relied upon. I do not subscribe to the view that an offence under Section 138 of the Negotiable Instrument Act will be made out only in case if there is a dishonour of cheque on the ground of insufficiency of funds or if the cheque is returned because it exceeds the amount which is available in the account. The Hon'ble Supreme Court in case titled Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza AIR 2004SC 408 has specifically laid down that in case the cheque is dishonoured on account of stop payment to his bankers by the drawer of the cheque then an offence under Section 138 read with section 142 of the Negotiable Instruments Act will be made out. The said judgment dealt with this aspect of the matter in detail and formulates the aforesaid proposition of law.

5. The very purpose of enacting the provision of 138 of the Negotiable Instrument Act is to confer credibility to the commercial transactions by ensuring that the cheque is honoured by a party which issues the cheque and that is why the dishonour of cheque on account of insufficient fund or stop payment would attract the provisions of Section 138 of the Negotiable Instruments Act. As a matter of fact in case there is

a direction to the banker by the drawer of the cheque that the cheque should not be honoured which is called in commercial parlance 'stop payment', it clearly shows that the drawer of the cheque had a dishonest intention of ensuring that the cheque which is issued is not honoured and thus not only an offence u/s 138 of the Negotiable Instruments Act will be made out but an offence of cheating will be also made out.

6. For the reasons mentioned above, I am of the view that there is no merit in the contention of the learned counsel for the petitioner that as the cheque was dishonoured on account of stop payment no offence is made out and the complaint deserves to be quashed. The petition is totally misconceived and accordingly the same is dismissed.

7. Expression of any opinion hereinbefore may not be treated as an expression on the merits of the case.

V.K. SHALI, J.

October 29, 2009
KP