

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 1454/2011

% Judgment decided on: 5th May, 2011

VIJENDER SINGH

....PETITIONER

Through: Mr. R.P. Bhandari, Adv.

Versus

M/s EICHER MOTORS LIMITED & ANR. RESPONDENTS

Through: Mr. Sanjoy Agnihotri, Adv. for
R-1.
Mr. M.P. Singh, APP for the
State-R-2.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J. (Oral)

Crl. M.A. No. 5340/2011 (Delay)

Delay in re-filing is condoned.

Application is disposed of.

Crl. M.C. No. 1454/2011

1. By way of present petition under Section 482 of the Code of Criminal Procedure petitioner seeks quashing of complaint case No. 1186/2010 (Old No. 1368/2007) pending in the court of Metropolitan Magistrate, Delhi.

2. Briefly stated facts of the case are that the respondent no. 1 has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as 'the Act') against the petitioner in the court of Metropolitan Magistrate, Karkardooma Courts, New Delhi. It appears that after filing of the complaint "VE Commercial Vehicles Limited" has purchased commercial vehicle business of respondent no. 1. On an application filed by "VE Commercial Vehicles Limited", it has been substituted as complainant in place of respondent no. 1 vide order dated 18th March, 2010 passed by the Metropolitan Magistrate.

3. After recording pre-summoning evidence, Metropolitan Magistrate, vide order dated 23rd April, 2010, has summoned the petitioner for the offence under Section 138 of the Act. Notice has been served on the petitioner on 20th October, 2010 to which he has pleaded not guilty and claimed trial. Trial is in progress. At this stage, petitioner has filed the present petition.

4. It was alleged in the complaint that respondent no. 1 had extended credit facility to Mr. Sanjay S/o Sukhbir in order to enable him to purchase one Eicher vehicle bearing no. HR-55-B-4273. Loan agreement was executed between the parties. Petitioner stood as guarantor for due compliance of terms and conditions as contained under the agreement. Petitioner issued two cheques in favour of respondent no.1 bearing no. 205370 and 205369 both dated 7th August, 2007 for ₹6 lakhs and ₹4

lakhs respectively, both drawn on UTI Bank Limited, Khan Market Branch, New Delhi. On presentation the cheques were returned dishonored for the reason “funds insufficient” vide return memo dated 15th August, 2007. Demand notice dated 31st August, 2007 served upon the petitioner did not bring any fruitful results, inasmuch as, petitioner failed to pay the amount involved in the cheques within the statutory period of 15 days. It was, thus, alleged that petitioner had committed offence under Section 138 of the Act and was liable to be punished thereunder.

5. Learned counsel for the petitioner has vehemently contended that guarantor cannot be prosecuted under Section 138 of the Act without taking any action against the principal borrower. Blank cheques had been handed over by the petitioner to the respondent no. 1 towards security which have been misused. Respondent No.1 could not have presented the cheques without first claiming the amount from the principal borrower and in this scenario, even if cheques had been returned dishonoured no offence under Section 138 of the Act is made out against the petitioner he being simply a guarantor. He has further contended that “VE Commercial Vehicles Limited” could not have been impleaded in place of respondent no.1.

6. I do not find any force in the above contentions of counsel for the petitioner. The issue as regards to the liability of the guarantor being co-extensive vis-a-vis principal debtor is of no significance and is out of purview of Section 138 of the Act. The

language employed in Section 138 of the Act clearly depicts the intention of legislation to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. At this stage, relevant it would be to refer to Section 138 of the Act, which reads as under:-

“Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, within thirty days of the receipt of

information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

7. Bare perusal of the above provision clearly shows that the section commences with the words “Where any cheque”. The use of word “any” assumes significance here. It shows that for whatever reason if a cheque is drawn on an account maintained by the drawer with its bank, in favour of any person for the discharge of “any debt or other liability, the ingredients of offence under Section 138 of the Act gets attracted in case cheque is returned dishonored for insufficiency of funds and the cheque amount is not paid within the statutory period despite service of notice. The legislature has been careful enough to record not only discharge in whole or in part of “any debt” but the same includes “other liability” as well. Supreme Court in **ICDS Ltd. Beena Shabeer & Another (2002) 6 SCC 426** has held that the words “any cheque” and “other liability” occurring in Section 138 are the two key expressions which stand as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the statute. These expressions leave no manner of doubt that for whatever reason it may be, the liability under Section 138 cannot be avoided in the event the cheque stands returned by the banker unpaid. It is further held that guarantor

issuing cheque towards dues outstanding against principal debtor cannot escape from his liability and the complaint under Section 139 against the guarantor would be maintainable. Supreme Court in Para 10 and 11 of the judgment has held as under:-

“10. The language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words "Where any cheque" The above noted three words are of excrement significance, in particular, by reason of the user of the word "any"--the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of *any debt or other liability*, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt *but the same includes other liability as well*. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.”

11. “The issue as regards the co-extensive liability of the guarantor and the principle debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act: 'Any cheque' and 'other liability' are the two key expressions which stands as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the Statute. Any contra interpretation would defeat the intent of

the legislature. The High Court, it seems, got carried away by the issue of grantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus does not lend any assistance to the contentions raised by the respondents.”

8. Learned counsel for the petitioner has next contended that the blank cheques had been given which have been filled up by the respondent no. 1 and attracts no legal consequences having been tempered with. This argument has to be rejected out rightly as there is no law that a person drawing the cheque has to necessarily fill it up in his own handwriting. Petitioner has not denied his signatures on the cheques. Once he has admitted his signatures on the cheque he cannot escape his liability on the ground that the same has not been filled in by him. When a blank cheque is signed and handed over, it means that the person signing it has given implied authority to the holder of the cheque, to fill up the blank which he has left. A person issuing a blank cheque is supposed to understand the consequences of doing so. He cannot escape his liability only on the ground that blank cheques had been issued.

9. For the forgoing reasons, present petition is dismissed being devoid of merits.

A.K. PATHAK, J.

May 05, 2011

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