

GAHC010036092017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./684/2017

MAN MOHAN SINGH SAHNI
S/O. LT. TARLOCHAN SINGH SAINI, PUNJAB ENGINEERING WORKS, A.T.
ROAD, NEAR KOHLI AUTOMOBILES, P.S. BHARALUMUKH, GUWAHATI-
781009, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:YOGESH NAGAL

S/O. LT. OM PRAKASH NAGAL
R/O. J. ALI ROAD
LAKHTOKIA
GUWAHATI-781001
KAMRUP M
ASSAM

Advocate for the Petitioner : MS.B CHOUDHURY

Advocate for the Respondent : MR.D K DASR-2

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER(CAV)

Date : 12-04-2023

Heard Ms. B. Choudhury, learned counsel for the petitioner. Also
heard Mr. B. Sarma, learned Additional Public Prosecutor for the

State/respondent No.1 and Mr. Z. Alam, learned counsel for the respondent No.2.

2. The petitioner has filed an application under Section 482 Cr.P.C. r/w Article 227 of the Constitution of India seeking quashment of the complaint case No. 2564/2016 pending in the Court of learned JMFC, Kamrup(M), Guwahati against the order dated 25.04.2017, whereby the learned Magistrate took cognizance of the offence punishable under Section 138 of Negotiable Instrument Act (hereinafter for brevity as N.I. Act.) and issued summons to the present petitioner as accused in the said complaint case.

3. The allegation against the accused/petitioner is that he had borrowed Rs.49 lakh from the complainant on the pretext of his urgent necessity and the complainant due to long standing relationship handed over the said amount to the petitioner by executing a deed of agreement dated 29/02/2016. In discharge of the lawful debt, the accused/petitioner issued two cheques bearing Nos. 345183 and 194364 dated 07.07.2016 drawn on Vijaya Bank and HDFC Bank, Fancy Bazar Branch for an amount of Rs.45,50,000/- and Rs.3,50,000/- respectively in favour of the complainant/respondent No.2. The complainant deposited the said cheques in the account of his bank i.e. Nagarik Samabay Bank Ltd. Ulubari Branch, Guwahati on 07.07.2016 but unfortunately, both the cheques were returned on the ground of "account closed."

4. On receipt of notice regarding dishonor of the said cheques, the complainant through his advocate sent a written notice by registered

post with AD intimating to the petitioner regarding the dishonor of the cheques. Though the notice has been received by the accused/petitioner but the cheque amount had not been paid by the petitioner to the respondent No.2/claimant. Finding no other alternative, the claimant/respondent No.2 has filed a complaint case vide C.R. Case No.2564/2016 before the Chief Judicial Magistrate, Kamrup(M) against the present petitioner under Section 138 N.I. Act. On the basis of the complaint filed by the respondent No.2/complainant, the learned Magistrate took cognizance of the offence and issued notice to the accused/petitioner for appearance before the court. Hence, this petition for quashing of the complaint case vide C.R. Case No. 2564/2016.

5. The case of the accused/petitioner is that the respondent No.2 has been known to him for the last fifteen years or so as he used to work as LIC agent and in his capacity as an agent, the respondent No.2 used to be entrusted all the insurance related works as well as other financial works by the petitioner. In fact, the trust that was reposed on the respondent No. 2 by the petitioner had gone to such an extent that almost every month, as and when the petitioner had to pay the LIC premiums, he used to hand over blank cheques without even putting the date on it to the respondent No.2, so as to enable him to pay the LIC premiums, as and when the need arises.

6. Ms. B. Choudhury, learned counsel for the petitioner has submitted that the cheques had not been issued to the respondent No.2/claimant in discharge of any debt or liability as the petitioner way

back in the year 2016 had intimated his bank with regard to the loss of cheques in question and the bank has issued a certificate with regard to the loss of the cheques.

7. It is also submitted by the learned counsel for the petitioner that no demand with regard to the amount in view of the dishonored cheques was ever made by the petitioner. It is also alleged that the complainant has filed a vague complaint as he has nowhere specified as to when the amount was paid and what was the manner in which the said amount was paid.

8. *Per contra*, Mr. Z. Alam, learned counsel for the respondent No. 2/complainant has submitted that as per the mandate of Section 138 of N.I. Act, there is presumption that the cheque has been drawn in discharge of any debt or liability. He further submits that the issues raised by the learned counsel for the petitioner are the disputed questions of facts those cannot be adjudicated upon in the petition under Section 482 Cr.P.C.

In support of his submission, the learned counsel for the respondent No.2/claimant has relied on the following case law-

HMT Watches Ltd v. M.A. Abida & Anr. reported in *2015 CRI.L.J. 2408 SC*.

9. I have considered the submissions made by the learned counsel for the parties and I have also gone through the case record vide C.R. Case No. 2564/2016 including the order dated 25.04.2017 passed by the learned JMFC, Kamrup(M).

10. After perusal of the complaint, it reveals that in order to pay the debt of Rs. 49 lakh, the petitioner had issued two cheques as aforesaid in favour of the respondent No.2/claimant regarding which the respondent No.2 has filed a complaint. There is a presumption that the cheque has been issued in discharge of any debt or liability and the presumption can be rebutted only during the course of trial. According to the respondent No.2, he paid the amount of Rs.49 lacks to the petitioner by executing a deed of agreement which is available in the record wherein both the parties i.e. the petitioner and the respondent No.2 had put their signatures. The petitioner did not deny the fact of execution of any deed of agreement on payment of such amount. The copy of two cheques are also available in the record wherein the petitioner had put his signature and the signature in the deed of agreement and two cheques are found to be similar. It is not denied by the petitioner that he issued the cheques by putting his signature amounting to Rs.45,50,000/- and Rs.3,50,000/- in favour of the respondent No.2. One report from FSL, Government of Assam, is available in the record which reveals that the signatures of the accused/petitioner in two cheques and in deed of agreement are similar in nature.

11. The contention raised by the learned counsel for the petitioner that he had already intimated the petitioner with regard to the loss of cheques and the banks had issued a certificate with regard to the loss of cheques cannot be considered at this stage. This is a defence which is available to the petitioner and can prove the same before the trial court. The disputed question of facts cannot be adjudicated upon in a

petition under Section 482 [Cr.P.C.](#)

12. In the case of *Rajeshbhai Muljibhai Patel v. State of Gujarat*, reported in (2020) vol. 3 SCC 794, it was observed as under-

“The High Court, in our view, erred in quashing the criminal case in CC No. 367 of 2016 filed by Appellant No. 3 Hasmukhbhai under Section 138 of the NI Act. As pointed out earlier, Yogeshbhai has admitted the issuance of cheques. When once the issuance of cheque is admitted/established, the presumption would arise under [Section 139](#) of the NI Act in favour of the holder of cheque that is the complainant Appellant 3. The nature of presumptions under Section 139 of the NI Act and Section 118(a) of the Evidence Act are rebuttable. Yogeshbhai has of course, raised the defence that there is no legally enforceable debt and he issued the cheques to help Appellant 3 Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the presumption under [Section 139](#) of the NI Act will continue to remain. It is for Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the

NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under [Section 139](#) of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under [Section 138](#) of the NI Act."

13. It is pertinent to mention here that though the respondent No.2/claimant on receipt of the cheques from the petitioner, he deposited those cheques to the bank and the bank returned the cheques on the ground of "account closed." According to the petitioner, he lost the cheques in the year 2016 and he had intimated the fact to the bank. It appears from the record that the petitioner intimated the Officer-in-Charge, Pan Bazar police station regarding loss of cheques on 19.06.2016 stating that his cheque amounting to Rs.45 lacks of Bank Nagarik Samabay Bank Ltd. A.T. Road Branch, Guwahati A/c No. 180/129(current Account), holder of the account- Punjab Engineering Works has been lost on 17.06.2016 from his office at A.T. Road, Guwahati. One copy of report from Vijaya Bank, Fancy Bazar Branch is also available in the record which reveals that the savings account bearing No. 800100301000089 has been opened on 25.08.2009 in the name of Punjab Engineering Works and the said account was closed on 21.06.2016. It appears from the documents available in the record that both the cheques were issued by the present petitioner on 07.07.2016 i.e. after closing of his account of Vijaya Bank. It transpires

that the petitioner had knowledge regarding closer of his bank account and in spite of that he issued the cheques in favour of the respondent No.2/claimant amounting to Rs.45,50,000/-. Under such backdrop, it can be assumed that the presumption under Section 139 N.I. Act will come into play at this stage.

14. The another contention raised by the petitioner that the complaint is vague as it is not mentioned as to when the payment was made and the mode and manner in which the payment was made to the petitioner. This issue too is a matter of trial and it can be adjudicated during the trial only.

15. In view of the above, I find no merit in the petition and it is dismissed accordingly. The learned trial court shall now proceed with the case as expeditiously as possible without being influenced by any observations made by this Court.

16. The parties are directed to appear before the learned trial court on 30.04.2023 and learned Magistrate shall dispose of the matter as early as possible preferably within six months.

17. With the above observations, the criminal petition stands disposed of. Stay, if any, is vacated accordingly.

18. Send back the LCR.

JUDGE

Comparing Assistant