



CNR: KAHC010190702024

NC: 2026:KHC:54454
CRL.P No. 3193 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 3193 OF 2024

BETWEEN:

MR. KUMAR YADAV
AGED ABOUT 55 YEARS,
SON OF LATE RADHAKRISHNA YADAV,
RESIDING AT NO.441,
4TH 'A' CROSS, 8TH 'B' MAIN,
HRBR LAYOUT, KALYANANAGAR,
BENGALURU 560 043.

...PETITIONER

(BY SRI. DILIP KUMAR I.S., ADVOCATE)

AND:

MRS. AMITA BHARATH
AGED ABOUT 55 YEARS,
WIFE OF MR.BHARATH KALYANARAM,
RESIDING AT A-501,
THE VIRTUOSO-COLUMBIA PACIFIC,
BUDIGERE CROSS MANDUR,
BENGALURU 560 049.

...RESPONDENT

(BY SRI. SHRAVANTH ARYA TANDRA, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
SET ASIDE THE ORDER DATED 28.08.2023 TAKING

Digitally signed
by PANKAJA S
Location: HIGH
COURT OF
KARNATAKA



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COGNIZANCE OF THE OFFENCES P/U/S 138 OF N.I. ACT BY THE XXII ADDL.C.M.M., BENGALURU IN C.C.NO.26526/2023 ARISING OUT OF PCR.NO.9017/2023 AT ANNEXURE-A AS FAR AS PETITIONER IS CONCERNED AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.26250/2023 PENDING ON THE FILE OF XXII ADDL.C.M.M., BENGALURU AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings in CC No.26526/2023, arising out of PCR No.9017/2023 dated 28.08.2023, filed before the XXII Addl. CMM, Bengaluru (for short 'learned Magistrate) against the petitioner for the offence punishable under Section 138 of N.I.Act and also to set aside the order dated 28.08.2023 in C.C.No.26526/2023 passed by the learned Magistrate.

2. The respondent has filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence under Section 138 of N.I. Act before the learned Magistrate in PCR No.9017/2023.



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3. The gist of the averments made in the complaint is that the complainant and the accused were known to each other and, in that capacity, the accused was stated to have availed a loan of Rs.39,71,154/- from the complainant. The sum and substance of the averments in the private complaint is that the respondent executed a sale deed in favour of the petitioner herein in respect of the property bearing Sy.No.249/12, measuring 1 acre and 1 gunta, for a total sale consideration of Rs.1,62,71,154/-. According to the complainant, except for a sum of Rs.59 lakhs, the entire sale consideration was paid by him. Thereafter, the petitioner issued a cheque dated 14.04.2023, drawn on the Bank of Baroda, for a sum of Rs.59,71,154/-. In the meantime, on 08.05.2023, the petitioner transferred a sum of Rs.20 lakhs to the complainant through RTGS. Consequently, according to the complainant, the amount outstanding was reduced to approximately Rs.39,71,000/-. It is further averred that the parties thereafter agreed that the petitioner would pay the said outstanding amount in three equal instalments on or before June 2023. It was also agreed between the parties that, in the event of the



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petitioner failing to pay the said amount, the complainant would be at liberty to present the cheque, subject to refunding the sum of Rs.20 lakhs already paid by the petitioner to the complainant on 08.05.2023. However, without refunding the said sum of Rs.20 lakhs, the complainant presented the cheque for the entire amount of Rs.59,71,000/-. The said cheque was dishonoured with the endorsement "Payment Stopped". Thereafter, the complainant caused a legal notice to be issued to the accused. Though the notice was served upon the accused, no reply was issued. Consequently, the complainant proceeded to file the complaint before the learned Magistrate.

4. The learned Magistrate, upon recording the sworn statement of the complainant and considering the material placed on record, took cognizance of the alleged offence against the petitioner vide order dated 28.08.2023. Aggrieved by the same, the petitioner has preferred the present petition.

5. Heard the learned counsel for the respective parties.

6. Apart from urging several other contentions, the learned counsel appearing for the petitioner primarily contended that



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there was a clear understanding between the petitioner and the respondent that, before presenting the cheque for a sum of Rs.59,71,000/-, the complainant was required to refund the sum of Rs.20 lakhs which had been paid by the petitioner to the complainant through RTGS on 08.05.2023. It is further contended that, as on the date of presentation of the cheque, the petitioner was liable to pay only a sum of Rs.39,71,000/- towards the legally enforceable debt. Despite the same, the complainant presented the cheque for the entire amount of Rs.59,71,000/-, without refunding the sum of Rs.20 lakhs already received from the petitioner. Accordingly, the learned counsel for the petitioner contended that the cheque, having been presented for an amount exceeding the legally enforceable debt due and payable as on the date of its presentation, would not attract the provisions of Section 138 of the Negotiable Instruments Act. To buttress his arguments he placed reliance on the judgment of ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel***, reported in (2023) 1 SCC 578.



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7. *Per contra*, the learned counsel appearing for the respondent vehemently contended that, despite service of the legal notice dated 02.08.2023, the petitioner neither caused a reply to be issued nor made payment towards the outstanding liability. Therefore, the complainant was justified in presenting the cheque, and the learned Magistrate, upon considering the material on record, rightly took cognizance of the offence punishable under Section 138 of the N.I. Act. The learned counsel further placed reliance upon Sections 82(b) and 82(c) of the N.I. Act and contended that the petitioner-accused has failed to discharge the legally enforceable liability due towards the complainant. It is his submission that, admittedly, the petitioner was liable to pay a sum of Rs.39,71,000/- as on the date of presentation of the cheque and, therefore, the petitioner was under an obligation to discharge the said liability towards the complainant. He further placed reliance upon Sections 14, 15, 78 and 82 of the N.I. Act and contended that the petitioner has not disputed the existence of the liability to the extent of Rs.39,71,154/- arising out of the sale transaction referred to *supra*. According to the learned counsel, the



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admitted existence of such liability is sufficient to attract the provisions of Section 138 of the N.I. Act. It is further contended that, having regard to the settled legal position laid down by the Hon'ble Apex Court, the inherent jurisdiction under Section 482 of the Cr.P.C. cannot ordinarily be invoked to interdict the proceedings for an offence punishable under Section 138 of the N.I. Act, particularly when the disputed questions of fact are required to be adjudicated in the course of trial. Hence, the learned counsel for the respondent submits that the petitioner has not made out any ground for interference with the order passed by the learned Magistrate and prays for dismissal of the petition.

8. To buttress his arguments he placed reliance on the following judgments of the Hon'ble Apex Court:

M/s.Sri Om Sales vs. Abhay Kumar Alias Abhay Patel and another reported in AIR 2026SC (Criminal) 127

Sanjabij Tari vs. Kishore S.Borcarand another reported in 2026 ACD 53 (SC)

Sripati Singh (since deceased) Through his son Gaurav Singh vs. State of Jharkhand ana Anr. reported in AIR2021 SC 5732



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Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Ltd. reported in AIR 2016 SC 4363

Dasharathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and another reported in AIR 2022 SC (Criminal) 1486

9. I have given my anxious consideration both on the submission and perused the entire materials available on records.

10. As could be gathered from the averments made in the private complaint, pursuant to the sale transaction entered into between the petitioner and the respondent in respect of the subject property, the petitioner was initially liable to pay a sum of Rs.59,71,000/- to the respondent. Accordingly, the petitioner issued a cheque dated 14.04.2023 for the said amount. It is further evident from the complaint averments that, subsequently, the petitioner paid a sum of Rs.20 lakhs to the respondent-complainant through bank transfer on 08.05.2023. The said payment of Rs.20 lakhs is not disputed by the respondent-complainant. The complaint itself discloses that, thereafter, the parties arrived at an understanding that the petitioner would pay the balance amount of Rs.39,71,000/- in



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three instalments on or before June 2023, failing which the complainant would be at liberty to present the cheque issued by the petitioner. However, it was further agreed between the parties that, in the event of presentation of the cheque, the complainant was required to refund the sum of Rs.20 lakhs already received from the petitioner on 08.05.2023. Thus, the very understanding between the parties contemplated that, upon presentation of the cheque, the amount of Rs.20 lakhs already paid by the petitioner was required to be taken into account. A further scrutiny of the complaint averments makes it clear that the complainant has admittedly not refunded the sum of Rs.20 lakhs received from the petitioner on 08.05.2023. Despite the same, the complainant proceeded to present the cheque for the entire amount of Rs.59,71,000/-. Therefore, as on the date of presentation of the cheque, the legally enforceable liability of the petitioner, according to the admitted transaction between the parties, was only to the extent of Rs.39,71,000/-, and not Rs.59,71,000/-. In spite of the said reduced liability, the complainant presented the cheque for the entire amount of Rs.59,71,000/- without refunding or otherwise



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accounting for the sum of Rs.20 lakhs already received from the petitioner. Thus, on the admitted facts emerging from the complaint itself, the cheque was presented for an amount in excess of the legally enforceable debt due and payable as on the date of its presentation. The crucial question that therefore arises for consideration is whether presentation of a cheque for an amount exceeding the legally enforceable liability, in the facts and circumstances of the present case, would attract the provisions of Section 138 of the N.I. Act. Section 138 of N.I.Act, reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.-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 be extended 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-



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(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 cheque 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."

11. On reading of the Section 138 it is clear that where the cheque issued by the person for legally enforceable debt i.e., in-part of any debt or other liability and the said cheque was returned when the person who issued the cheque shall be deemed to have committed the offence. In the instant case as discussed *supra*, the cheque was not issued for discharge of the own or part of the legally enforceable debt since the cheque amount was more than the liability. In such circumstances, the Hon'ble Apex Court in the case of ***Dasharathbhai Trikambhai Patel*** stated *supra* held in paragraph Nos.29 to 34.5 reads as under:



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"29. Section 138 creates a deeming offence. The provisos prescribe stipulations to safeguard the drawer of the cheque by providing them the opportunity of responding to the notice and an opportunity to repay the cheque amount. The conditions stipulated in the provisos need to be fulfilled in addition to the ingredients in the main provision of Section 138. It has already been concluded above that the offence under Section 138 arises only when a cheque that represents a part or whole of the legally enforceable debt at the time of encashment is returned by the bank unpaid. Since the cheque did not represent the legally enforceable debt at the time of encashment, the offence under Section 138 is not made out.

30. The appellant contends that the purpose of Section 138 of the Act would be defeated if the dishonour of the cheque issued for security is not included within the purview of Section 138 where the payment of a part of the cheque amount is made. It was contended that it would lead to a possibility where the drawer of the cheque could evade prosecution under Section 138 by paying a small amount of the debt while defaulting on the remaining payment. Section 56 stipulates that if there is an endorsement on a negotiable instrument that a part of the sum mentioned in the cheque has been paid, then the instrument may be negotiated for the balance. Section 56 reads as follows:

***"56. Indorsement for part of sum due.—**No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."*

31. Section 15 defines the phrase "indorsement" as follows:

***"15. Indorsement.—**When a maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back*



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or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser"."

32. *A Division Bench of the Kerala High Court has held in Joseph Sartho v. G Gopinathan [Joseph Sartho v. G. Gopinathan, 2008 SCC OnLine Ker 254 : (2008) 3 KLJ 784] that since the representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the drawer of the cheque cannot be convicted for the offence under Section 138 of the Act. The High Court of Delhi addressed the same issue in Alliance Infrastructure Project (P) Ltd. v. Vinay Mittal [Alliance Infrastructure Project (P) Ltd. v. Vinay Mittal, 2010 SCC OnLine Del 182 : ILR (2010) 3 Del 459] . The High Court observed that when part-payment is made after the cheque is drawn, the payee has the option of either taking a new cheque for the reduced amount or by making an endorsement on the cheque acknowledging that a part-payment was made according to the provisions of Section 56 of the Act. It was also held that the notice of demand which requires the drawer of the cheque to make payment of the whole amount represented in the cheque despite receiving part repayment against the sum, before the issue of notice, cannot be valid under Section 138(b) of the Act. A similar view was taken by the High Court of Gujarat in Shree Corpn. v. Anilbhai Puranbhai Bansal [Shree Corpn. v. Anilbhai Puranbhai Bansal, (2018) 2 GLH 105] .*

33. *Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed,*



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such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part-payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

34. *In view of the discussion above, we summarise our findings below:*

34.1. *For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.*

34.2. *If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.*

34.3. *When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted.*

34.4. *The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the "legally enforceable debt" on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.*



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***34.5.** The notice demanding the payment of the "said amount of money" has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided.*

12. On collocating the above findings of the Hon'ble Apex Court to the facts and circumstances of this case, the above judgment is squarely applicable to the present case. No doubt the petitioner has not caused reply to the legal notice issued by the complainant, further complaint averments itself reveal that the petitioner was only owing a sum of Rs.39,71,000/- as on the date of presentation of the cheque, the non-replying the legal notice or other aspects argued by the learned counsel for the petitioner do not required to be considered in the present case. Accordingly, by applying the above judgment, I am of the considered opinion that proceedings cannot be continued against the petitioner-accused. Hence, I proceed to pass the following:

ORDER

- i. The criminal petition is ***allowed***.



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ii. The proceedings in CC No.26526/2023, arising out of PCR No.9017/2023 dated 28.08.2023, filed before the XXII Addl. CMM, Bengaluru, against the petitioner for the offence punishable under Section 138 of N.I.Act and set aside the order dated 28.08.2023 in C.C.No.26526/2023, are hereby quashed.

SD/-
(RAJESH RAI K)
JUDGE

GPG
List No.: 1 Sl No.: 5