IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2607-2018 (O&M)
Date of decision : 27.08.2019

Kailash Vati ...Petitioner

Versus

M/s Ludhiana Beverages Pvt. Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Shakti Bhardwaj, Advocate for the petitioner.

Ms. Divyastuti Parsoon, Advocate with
Ms. Ankita Sambyal, Advocate and
Mr. Rujhan Dhawan, Advocate for the respondent.
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ANIL KSHETARPAL, J.

The questions which this Court is called upon to answer in the present petition filed under Section 482 of the Criminal Procedure Code praying for quashing of the criminal complaint filed under section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881"), are:-

i) Whether proceedings initiated under section 138 of the Act of 1881, are liable to be quashed in exercise of powers under Section 482 Cr.P.C., if it is undisputed that blank signed undated cheque was issued by the drawer?

ii) If date on which the cheque was signed and date mentioned in the column meant for filling up date in the cheque are different, What would be the date on which the cheque is drawn?

iii) Whether filling up of date and amount in the already signed cheque would result in material alteration within the meaning of Section 87 of the Act of 1881, hence, renders the same void?

Some facts are required to be noticed. Complainant-respondent company claims to be authorized bottler (running operating a bottling plant) of Coca Cola company, Atlanta. Accused is a proprietor of M/s Kaka Ram, Dabbi Bazar, Chandigarh Road, Samrala District Ludhiana. It is the assertion of the complainant that accused while submitting the Distribution/AMC profile, also delivered to the complainant, two account payee blank/undated Multi City cheques drawn on Bank of Baroda, Samrala favouring complainant M/s Ludhiana Beverages Private Limited (complainant) under her signatures in the capacity of proprietor, to be utilised against any outstanding liability at any time. It was assured that these cheques would be honoured on their presentation to the bank as and when utilized by the complainant for realisation of its outstanding dues. The cheques were issued by the accused in discharge of legally enforceable liability towards the complainant of the outstanding dues as per Books of Accounts of the parties. Letter through which cheques in question were allegedly delivered to the complainant is extracted as under:-

> *"Please find enclosed herewith following Account payee blank/undated cheques duly signed by authorized person to be utilized against outstanding liability*
>
> *Due to you.*

Sr. No.	***Cheque No.***	***Bank Name***
	000380	*Bank of Baroda*
	000381	*Bank of Baroda*

> *We assure you that these cheque will be honoured on presentation as and when utilized by you for realisation of our outstanding.*
>
> *In case these cheques are not honoured on presentation you have every right to take legal action as you*

may considered necessary for realisation of amount due from us."

According to the company-complainant, a sum of ₹13,88,725/- was due and outstanding against the accused and before presentation of the cheque, the company discussed the matter with accused and after reconciling the accounts, a sum of ₹13,88,725/- was found due and payable. In spite of request made for clearing the outstanding dues, accused did not come forward to pay the outstanding amount despite of repeated reminders, and, therefore, complainant filled one cheque for ₹4,88,725/- and second cheque for ₹9,00,000/- in terms of Distribution/AMC Profile and informed the accused over telephone and she assured that cheques would be honoured. The cheques in question, on presentation were dishonoured with the remarks "Accounts Closed" and, therefore, after service of notice, which was duly replied, complaint was filed in which accused-petitioner was summoned.

Petitioner-accused has filed this petition, at initial stage on being summoned, seeking quashing of complaint and summoning order, on the ground that since admittedly, the cheques in question which were dishonoured, were undated signed blank cheques delivered at the time of submitting Distribution/AMC profile, therefore, proceedings under Section 138 of the Act of 1881 cannot be initiated as the cheque in question does not fall within the sweep of cheques mentioned in Section 138 of the Act of 1881. Learned counsel for the petitioner has also submitted that on the date the cheques in question issued were the security cheques and not for existing and legally recoverable liability and, therefore, prosecution commenced is not maintainable. Counsel for the petitioner, in support thereof, has relied upon judgment passed by Hon'ble the Supreme Court in the case of ***M/s Indus Airways Pvt. Ltd. and others Vs. M/s Magnum Aviation Pvt. Ltd. and another, (2014) 12 SCC 539***. He has also relied upon following judgments of different High Courts:-

1) Judgment passed by this Court in the case of ***Narsi Dass Vs. Surender, 2015(1) RCR (Criminal) 104***,
2) Judgment passed by the Uttarakhand High Court in the case of ***Dinesh Goel Vs. M.K. Goel, 2013(8) RCR (Criminal) 2479,***
3) Judgment passed by the Kerala High Court in the case of ***Capital Syndicate Vs. Jameela, 2003(2) RCR (Criminal) 286,***
4) Judgment passed by the Madras High Court in the case of ***M/s Balaji Seafoods Exports (India) Ltd. Vs. Mac Industries Ltd., 1999(1) RCR (Criminal) 683,***

On the other hand, learned counsel for the respondent has drawn attention of the Court to the judgment passed by Hon'ble the Supreme Court in the case of ***Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197*** and the judgment passed by the Bombay High Court in the case of ***M/s Sai Auto Agencies, Amravati Vs. Sheikh Yusuf Sheikh Umar, 2012(7) RCR (Criminal) 300*** to contend that even if it is admitted that cheques in questions were blank undated signed cheques, still proceedings u/s 138 of the Act of 1881 are maintainable.

Before examining various precedents cited by learned counsel for the parties, it would be appropriate to examine relevant provisions of the Act of 1881. “Cheque” has been defined in Section 6 whereas “Negotiable instrument” has been defined in Section 13. Other relevant provisions are contained in Sections 87, 118, 138 and 139 of the Act of 1881, which are also extracted as under:-

*"**Section 6:- Cheque:-***

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation I.-- For the purposes of this section, the expressions

(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;]

(b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II. -- For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.]

Explanation III. -- For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).

Section 13:- "Negotiable Instrument":-

(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i) -- A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) -- A promissory note, bill of exchange or cheque is payble to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation (iii) -- Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of serveral payees.

Section 87: Effect of material alteration:-

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.*-- And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.*

The provisions of this section are subject to those of sections 20, 49, 86 and 125."

Section 118:- Presumptions as to negotiable instruments:-

Until the contrary is proved, the following presumptions shall be made:--

(a) ***of consideration:****-- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

(b) ***as to date:****-- that every negotiable instrument bearing a date was made or drawn on such date;*

(c) ***as to time of acceptance:*** *that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

(d) ***as to time of transfer:****-- that every transfer of a negotiable instrument was made before its naturity;*

(e) ***as to order of indorsements:****-- that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

(f) ***as to stamps:****-- that a lost promissory note, bill of exchange or cheque was duly stamped;*

(g) ***that holder is a holder in due course:****-- that the holder of a negotiable instrument is a holder in due course :*

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 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--

(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.

Explanation.-- For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

Section 139:- Presumption in favour of holder:-

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

From careful reading of the definition of the cheque, it is apparent that cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. On reading the definition of negotiable instrument, it is apparent that cheque is a negotiable instrument whereas Section 87 deals with effect of material alteration.

Section 118 raises various statutory presumptions in favour of holder of a negotiable instrument which include cheques. Section 138 inserted by Amendment Act in the year 1989, deals with dishonour of the cheque for insufficiency of funds etc. in the account of the drawer of the cheque. It is provided under Section 138 that if 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 for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, such person shall be deemed to have committed an offence. Of course, it is also provided that merely on dishonour of the cheque, offence under Section 138 would not be complete, unless demand for payment of the said amount of money by giving notice in writing to the drawer of the cheque is sent and the drawer does not make the payment within 15 days of the receipt of said notice. Explanation to Section 138 provides that debt or other liability means a legally enforceable debt or other liability.

Section 139 further raises a presumption apart from the presumptions under Section 118 in favour of holder of a cheque. Both the presumptions under Section 118 as well as under Section 139 are statutory in nature.

Now let us examine the judgments cited by learned counsel for the parties.

This Court has carefully read the judgment passed by Hon'ble the Supreme Court in the case of M/s Indus Airways Pvt. Ltd. and others (Supra). In the aforesaid case, for purchase of certain aircraft parts, two purchase orders were issued by the accused in favour of the complainant M/s Magnum Aviation Pvt. Ltd. In respect of these purchase orders, two post dated cheques were issued. Before the aircraft part could be supplied, the purchase orders were cancelled. Request was sent for returning the post dated cheques but those were not returned. In those circumstances, Hon'ble the Supreme Court has held that cheques were not issued for discharge of debt or other liability. Learned counsel for the petitioner relied upon paras 9 and 15 of the judgment, which are extracted as under:-

> *"9. The explanation appended to Section 138 explains the meaning of the expression 'debt or other liability' for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed*

is not supplied, in our considered view, the cheque cannot be held to have been drawn for an exiting debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.

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15. The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the N.I. Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the N.I. Act. The Delhi High Court has traveled beyond the scope of Section 138 of the N.I. Act by holding that the purpose of enacting Section 138 of the N.I. Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque *cannot be said to have been drawn for an existing debt or liability."*

Learned counsel laid stress on the fact that the date on which cheque was drawn, it should have been issued in discharge of existing or past adjudicated liability to bring act of dishonouring of the cheque, within the scope of Section 138 of the Act of 1881. He further laid stress on the words mentioned in para 15 of the judgment by Hon'ble the Supreme Court wherein the words "legally enforceable debt or other liability existing on the date the cheque was drawn" has been used. He submitted that on the date when the cheques were issued in the present case, there was no legally enforceable debt or other legal liability, hence proceedings are liable to be quashed.

This Court has considered the submissions of learned counsel. A judgment passed by a Court is to be read in the context it is delivered. The judgment passed by Hon'ble the Supreme Court cannot be read as a statute, wherein each coma and word has to be given meaning. The judgments are only interpreting the provisions of the Act or the Rules as the case may be. Hence, the judgments passed by the Court cannot be read as a statute.

If one goes back to the statutory provisions which have been extracted above, it is apparent that the statute has not used the words "past or existing liability". The words which have been used in Section 138 are "discharge in whole or in part of any debt or other liability". Even explanation of debt or other liability is restricted to legally enforceable debt or other liability. Hence, the judgment passed by Hon'ble the Supreme Court in the case of M/s Indus Airways Pvt. Ltd. and others (Supra) cannot be read in a manner to lay down that on the date when the cheque was signed, it should be for existing legally enforceable debt or liability.

One more significant word which is used in Section 138 is "cheque drawn" even Section 6 also uses the word "drawn". The question is "what is the date when the cheque is drawn". Whether it is a date on which it is signed or it is a date mentioned in the column meant for date.

Learned counsel for the petitioner has tried to argue that it would be the date when the cheque was signed. Although, the argument in first blush appears to be attractive however, on close scrutiny, found to be without substance. The date on which the cheque is drawn has to be with reference to the date mentioned in the column in the cheque and not the date on which it is/was signed. If the interpretation as propounded by learned counsel for the petitioner is accepted, all post dated cheques cannot be treated as valid cheques within the meaning of Section 6 and drawer of the cheques would stand absolved from criminal prosecution as provided in Chapter 17 of the Act, if the cheques are presented after 3 months of the date on which signatures were appended. This was not the intention of the legislature. It is for this reason, date when the cheque is drawn is not defined in the Act. The date on which the cheque is drawn is referring the date mentioned in the cheque. The post dated cheques are normally used in business circles for repayments of equated monthly installments in all hire purchase agreements and credit facilities availed by the debtors from the nationalized banks, post dated cheques are issued in advance towards discharge of liability, would go out of the purview of the provisions of Section 138 of the Act of 1881, if the argument of learned counsel for the petitioner is accepted.

At this stage, it would be apt to notice subsequent judgment of Hon'ble the Supreme Court in the case of Bir Singh (Supra) cited by learned counsel for the respondent. From para 37 to 40, the Court has dealt with signed blank cheques and it has been held that signed blank cheques which are voluntarily signed and handed over to the accused towards some payment would attract presumption under Section 139 of the Act of 1881. Para 37 to 40 of the judgment are extracted as under:-

> *"37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*
>
> *38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*
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> *39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. 16 Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence*

or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

Now let us deal with other judgments cited by learned counsel for the petitioner. First judgment is in the case of Narsi Dass (Supra), in which this Court was hearing appeal against judgment passed by the trial Court acquitting the accused. On facts, the Court found that blank undated signed cheque was issued as a security in good faith and not in lieu of any legal liability. Hence, the aforesaid judgment cannot be read in a manner to lay down that blank undated signed cheque can never be used for initiating proceedings under Section 138 of the Act of 1881.

Second judgment relied upon by the learned counsel for the petitioner is from Uttrakhand High Court in the case of Dinesh Goel (Supra). In the aforesaid case, it was established before the Uttrakhand High Court that blank security cheque was issued in favour of the complainant and there was communication that since the name of the company complainant has been changed, therefore, undated security cheque is required to be replaced. The aforesaid replaced cheque was issued but the previous cheque was not returned. It was in those circumstances the Court quashed the complaint.

Judgment passed by the Kerala High Court in the case of Capital Syndicate (Supra) is also in the facts of the case because in the aforesaid case, accused had obtained hire purchase facility from the complainant firm and had paid 8 installments but thereafter, a cheque for ₹36,000/- was presented which was dishonoured. Still further, the Kerala High Court was hearing appeal against judgment of acquittal.

Next judgment referred is in the case of M/s Balaji Seafoods Exports (India) Ltd. (Supra) of Madras High Court. In the aforesaid case, the Court found that an undated cheque for ₹35,00,000/- was handed over as a security for the purpose of the contract and it was not handed over with the intention of making it as an instrument of immediate negotiation to discharge a subsisting liability or debt. Hence, the aforesaid judgment would also not have any application.

As discussed earlier, the provisions of the Act does not lay down that the cheque is required to be of existing liability. The word "existing" has not been used in the statute. Still further, the date on which the cheque was drawn is also the date mentioned in the column meant for the date in the cheque.

In the present case, respondent has produced the letter issued by the petitioner to the respondent wherein the complainants have been authorized and assured that these signed blank undated cheques can be utilized against any outstanding liability due to them. The relevant portion of the letter through which the signed undated cheques were issued has already been extracted.

It has been pleaded by the complainant that the cheques were drawn in favour of the complainant and only the columns meant for filling up the amounts in numerical and words as also the date, were blank.

Now last issue required to be examined is with reference to

Section 87 of the Act of 1881 which deals with material alteration of the negotiable instruments. It has been provided that any material alteration shall render the same, void. Question is whether filling up the date and the amount would fall within the definition of material alteration. Kerala High Court in the case of Capital Syndicate (Supra) has held that subsequent writing of the date in an undated cheque would amount to material alteration rendering the instrument void under Section 87 of the Act of 1881. Whether writing a date in the blank column meant for entering a date would fall within the scope of material alteration or not. In the considered view of this court, filling in the blank shall not be always required to be treated as a material alteration. The alteration in the common parlance is understood to mean, something already been written has been changed/altered subsequently. Alteration is not synonymous to the word “filling up the unfilled column or space”. Alteration is permissible, if it is made in order to carry out the common intention of the original parties. It may be noted here that first of all, it is the pleaded case of the complainant that the date and the amount has been filled up with the consent of the accused which can only be proved at the time when parties are allowed to lead evidence.

Still further, the jurisdiction of the Court while exercising powers under Section 482 Cr.P.C. is limited. The power under Section 482 Cr.P.C. can be exercised in favour of the petitioner only when the Court is certain that the continuation of the proceedings would be of no use and the Court is in a position to record from finding that continuation of such proceedings would result in abuse of the process of the Court. Once there is a doubt or there are certain questions which need adjudication on appreciation of evidence, the High Court should not exercise powers under Section 482 Cr.P.C. to quash the complaint.

For the reasons stated above, this Court does not find any ground to quash the complaint in exercise of its powers under Section 482 Cr.P.C.

Accordingly the present petition is dismissed. Needless to observe that the learned trial Court would adjudicate the complaint independently without being influenced by observations made by this Court while dismissing the present petition.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

27.08.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No