

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C.4698/2019 & CRL.M.A.36045/2019**

Judgment reserved on :01.10.2019
Date of decision :10.10.2019

M/S GOUTAM SHOE STORE & ANR. Petitioners

Through: **Mr. Rizwan, Advocate.**

versus

RELAXO FOOTWEAR LTD. Respondent

Through: **Mr. Rohan Jaitley & Mr.
Akshay Sharma, Advocates.**

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner no.1 M/s Goutam Shoe Store through its signatory Goutam Dutt arrayed as the petitioner nos. 1 & 2 respectively, vide the present petition seek the quashing of the Complaint Case No.6337/2019 and the proceedings emanating therefrom, pending before the learned MM-04, Patiala House Courts, New Delhi as well as the quashing of the order dated 01.05.2019 vide which the petitioner was summoned on cognizance having been taken by the learned Trial Court of the MM-04 (NI Act) NDD/PHC, New Delhi District of the alleged commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. Notice of the petition was issued to the respondent who has put in appearance.
3. Submissions were made on behalf of either side by their learned counsel.
4. Vide the impugned order dated 01.05.2019, the learned Trial Court after having taken into consideration the complaint filed by the complainant i.e. the respondent herein as well as the affidavit tendered in pre-summoning evidence and documents submitted with the complaint which were duly exhibited, taking into account also the verification of the averments made in the complaint and the documents produced vide the affidavit of evidence, observed to the effect that there was sufficient ground to proceed further against the proprietor accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 i.e. against the petitioner no.2 herein, though it was specifically observed that there was no ground for summoning the proprietorship firm as it was a non juristic personality.
5. The Criminal Complaint no. 6337/2019 filed by the complainant i.e. the respondent herein alleged vide paragraph Nos. 3 to 12 thereof to the effect:-

“3. That Accused No.2 is the sole proprietor and authorized signatory of the sole Proprietorship concern Accused No.1 namely M/s Goutam Shoe Store having its office at address stated in the memo of parties. That Accused No.2 is liable and responsible for the acts, omissions and affairs of the Accused No. 1 concern. Further it was represented that the Accused No.2 through his Proprietorship Concern was engaged in the business of

selling footwear from the premises located at Cooch Behar, West Bengal and had approached the Complainant for the purchase of footwear. Further it is stated that the accused has been in business association with the Complainant for a long time for the sale and supply of footwear. During the course of business, the Complainant raised invoices on the Accused and the invoices raised by Complainant are being adjusted in its books of accounts on FIFO (First In-First Out) basis, as per the payments received from the accused from time-to-time. The Complainant has filed the copies of the customer ledger, customer information form, unpaid invoice and the GR receipt of the goods supplied to the Accused, wherein the Accused has acknowledged the receipt of goods.

4. That pursuant to the written communication dated 31.10.2018, addressed by the Complainant to the Accused No.1, inter-alia demanding the overdue outstanding amount, the Accused towards the discharge of his liability issued a post dated Cheque bearing No. 000011 dated 13.03.2019 for Rs.7,67,472.21 (Seven Lakh Sixty Seven Thousand Four Hundred Seventy Two Rupees and Twenty one Paisa only) drawn on Bank of Baroda, Coochbehar Branch, West Bengal-736101, in favour of the complainant for the payment of the said amount.

5. That while issuing the aforesaid Cheque bearing No. 000011 dated 13.03.2019 for R.7,67,472.21 (Seven lakh Sixty Seven Thousand Four Hundred Seventy Two Rupees and Twenty one Paisa only), the accused assured and represented to the complainant that the said Cheque was good for realization and the same shall be honoured on its presentation.

6. That the complainant presented the aforementioned cheque for encashment to HDFC Bank Limited, Kasturba Gandhi Marg, New Delhi 110001. The said cheque, got dishonoured on account of "ACCOUNT CLOSED". The intimation regarding dishonoring of the aforesaid Cheque was given to the complainant by its Bankers, HDFC Bank

Limited, Kasturba Gandhi Marg, New Delhi-110001 vide cheque return memo dated 15.03.2019 and having the remark "ACCOUNT CLOSED" which shows the malafide intention and ulterior motive of the accused for avoiding the discharge of its legal liability towards the complainant company and has thus committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881.

7. That the Accused had issued the Cheque in discharge of his liability on account of the footwear supplied by the Complainant in line with invoices duly raised. The accused person is liable to pay the amounts of the dishonoured Cheque detailed above, besides paying interest thereon @24% per annum.

8. That fact that the Cheque has been dishonoured was brought to the notice of the accused when the Complainant got a legal notice issued by its lawyer, dated 27.03.2019 (Dispatched on 28.03.2019), as contemplated in Section 138 of the Negotiable Instruments Act, 1881, to the Accused. The notices were sent by Speed Post as well as Registered Post.

9. It is stated that the Legal Notice was duly received by the accused on 30.03.2019 via speed post and on 02.04.2019 via registered post, but the accused chose to ignore the said legal notice and didn't pay the aforementioned amount to the complainant within the stipulated period prescribed under the Negotiable Instruments Act.

10. That the offence under Section 138 Negotiable Instruments Act, 1881 for dishonour of the aforementioned Cheque committed by the Accused, has led to the filing of the present criminal complaint by the Complainant. In view of the representations made by the Accused, the Complainant not only delivered the goods and materials to Accused but also kept granting them sufficient time to repay the outstanding amount from time to time.

11. That Complainant has been deceived by the representations of the accused, which clearly imply that the Accused has intentionally cheated the Complainant and induced him to believe it that the Cheque in question was good for the amount due.

12. That furthermore, the Accused No,2 is liable under Section 138 r/w Section 142 of Negotiable Instrument Act, 1881 and under section 420 of IPC as the Accused No. 2 is the sole proprietor of Accused No. 1 namely M/s Goutam Shoe Store and is in charge and responsible for the day to day business of the said M/s Goutam Shoe Store and has represented and assured that he shall honour the liability against the Complainant, but failed to do so while knowing in advance that the Cheque in question will be dishonoured.”

6. The petitioners have contended that the complaint filed by the complainant/ respondent is not maintainable as the necessary elements required for constitution of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 are not brought forth in the instant case, in as much Section 138 of the Negotiable Instruments Act, 1881 requires the existence of a bank account and maintenance thereof at the time of the issuance of a cheque by any person, which cheque needs to be dishonoured on account of insufficiency of funds or it requires the amount of the cheque to be in excess of the amount arranged to be paid from that account, to make a person culpable for the commission of an offence punishable under the said provision of Section 138 of the Negotiable Instruments Act, 1881.

7. The petitioners submit that in the instant case their bank account had closed in the year 2017 and they had informed the respondent of the same and in as much as there was no cheque drawn by the

petitioner on an account maintained by them, the complaint of the respondent is not maintainable. The petitioners further submitted that the respondent was also in receipt of the letter dated 22.08.2017 sent by the petitioners, wherein it had been stated that their account number had changed to 09010400000186 but despite the same, the respondent in a malafide manner had presented the cheque for encashment, which was drawn from the previous account as a security cheque and that the respondent having knowledge that the account on which the cheque was drawn by the petitioners had been frozen, the complaint that had been filed by the respondent regarding dishonour of the cheque is devoid of merit and is liable to be dismissed.

8. Reliance has thus been placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in ***"Jugesh Sehgal Vs. Shamsher Singh Gogi"*** (2009) 14 SCC 683 and the verdict of this Court in ***"M/s. Ceasefire Industries Ltd. Vs. State & Ors."*** in Crl.L.P. 51/2017 to submit that where the complainant in that case was aware that the account on which the cheque was drawn was frozen, the complaint regarding the dishonor of the cheque or insufficiency of the funds was liable to be dismissed.

9. On behalf of the respondent, it was submitted by the learned counsel for the respondent that the aspect of receipt of the communication dated 22.08.2017 from the petitioner no.1 herein by the respondent vide which the petitioner had sought to inform that it has changed its account number to 09010400000186, had not been received by the respondent as alleged by the petitioner on 22.08.2017

and it was further submitted on behalf of the respondent that the said aspect could be adjudicated only on trial.

10. On behalf of the petitioners, it was submitted that there were three cheques bearing no.610725, 610726 & 610727 all dated 27.12.2017, which had been issued by the petitioners in lieu of the cheque of which the account had since been closed, which had not been encashed.

11. Reliance was placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***"Bir Singh Vs. Mukesh Kumar"*** (2019) 4 SCC 197 with specific reliance on the observations in Para 32, 33, 34, 35, 36 & 37 of the said verdict which read to the effect:-

"32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

33. 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.

34. 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.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. 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.

36. 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.

37. The fact that the appellant complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.”,

to contend to the effect that when a blank cheque leaf voluntarily signed, is handed over by an accused toward some part of payment, a presumption arises in terms of Section 139 of the Negotiable

Instruments Act, 1881 in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

12. On a consideration of the submissions that have been made on behalf of either side and the rulings relied upon, it is essential to observe that the reliance placed on behalf of the petitioners on the verdict of this Court in ***“M/s. Ceasefire Industries Ltd. Vs. State & Ors.”*** (supra) with specific reliance on the observation in paragraph 7 thereof, which reads to the effect:-

“7. The bank which returned the cheques unpaid had made it clear that the accounts had been blocked. It is clear that the complainant itself was aware that the accounts had been frozen in terms of directions by some statutory authority. In these circumstances, the reasons for return of the cheques unpaid being not what is envisaged in Section 138 of the N.I. Act, these petitions are devoid of merit and, therefore, dismissed.”,

and reliance also placed on behalf of the petitioners on the verdict of the Hon’ble Supreme Court in ***“Jugesh Sehgal Vs. Shamsher Singh Gogi”*** (supra) with specific reliance on the observations in paragraph 13 thereof, which reads to the effect:-

“13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

- (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;***
- (ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;***

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.”,

does not in any manner aid the petitioners, in as much as it is apparent that the factum of the closure of the bank account from which the cheque was drawn has not even been mentioned in the purported letter dated 22.08.2017 issued by the petitioners to the respondent, which letter reads to the effect:-

Ref. No.....

Date 22/8/2017

**To
The G.M (Sales & Marketing)
Relaxo Footwear Limited**

Sub:- Change in Account Number

Sir,

This is to inform you that GOUTAM SHOE STORES, Coochbehar has changed its Account Number. New Account Number of GOUTAM SHOE STORES is 04/186.”

13. Significantly, in a communication dated 15.11.2018 sent by the petitioners to the respondent placed as Annexure P8 to the petition, it has been stated by the petitioners to the effect:-

“With due respect I am lo inform you that I am The proprietor of GOUTAM SHOE STORES and honorable distributor of the Relaxo Footwear limited. I have been dealing business with your company since 2007. We were doing good business still July, 2018, with fulfilling all the terms and conditions of your company. It is a matter of great regret that your company have given a new distributor ship beside my shop without informing me about this matter. As a result of your hasty decision, a huge stock of your company lies in our store. Besides, a huge amount, of money are still dues in the market. In this circumstances, I am in a great trouble. Your hasty decision has mined my business. Now, I would like to request either you withdraw the rest amount of stocks in my stores or settle the matter in an honorable way.”

which also makes no mention of the petitioners having closed the account from which the cheque bearing no.000011 dated 13.03.2019 for a sum of Rs.7,67,472.21/- was issued.

14. As regards the contention that has been raised on behalf of the petitioners that the said cheque was subsequently filled in by the respondent though the account was closed in the year 2017, the same is apparently an aspect which cannot be determined without trial,

though the bank return memo dated 15.03.2019 indicates that the cheque bearing no.000011 for a sum of Rs. 7,67,472.21/- was returned on 15.03.2019 as the account in the HDFC Bank was closed, the said bank return memo also does not indicate when the said account was closed and thus the contention raised on behalf of the petitioners that the account of the petitioners was already closed on the date 13.03.2019, the date of the issuance of the cheque can only be determined on trial.

15. The cheque in question was undoubtedly issued by the petitioners as brought forth through the averments in paragraph 5 of the petition, which reads to the effect:-

“5. That the said cheque was from an old account of the petitioner bearing no. 09010500000085. The said cheque was drawn on Bank of Baroda, Cooch Behar Branch, West Bengal-736101. The said cheque was returned as dishonored as per the bank memo dated 15.03.2019 with the remark "account closed".”

The aspect of the closure of the bank account of the petitioner prior to the issuance of the cheque, is a matter which cannot be determined without trial as already observed hereinabove and thus, it is held that there is no infirmity in the impugned order dated 01.05.2019 of the learned MM-04, (NI Act) NDD/PHC, New Delhi District in CC No.6337/2019, whereby the cognizance of the alleged commission of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 has been taken only against the petitioner no.2 herein.

16. The petition CRL.M.C.4698/2019 and the accompanying application CRL.M.A.36045/2019 are thus, declined.

17. Nothing stated hereinabove shall however, amount to any expression on the merits or demerits of the proceeding in Complaint Case No.6337/2019 pending before the learned MM-04 (NI Act) NDD/PHC, New Delhi.

OCTOBER 10, 2019/NC **ANU MALHOTRA, J.**

