

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R 1513 of 2021
With
Aloke kumar Das
Vs
Sudarshan Paper & Board Private Ltd

For the Petitioner : Mr. Krishna Das Poddar

For the opposite party : Mr. Krishnendu Bhattacharya
Mr. Avishek guha

Heard on : March 10, 2022

Judgment on : March 25, 2022

Bibhas Ranjan De, J.:-

1. I am dealing with an application under Section 482 of the Code of Criminal procedure (for short 'Cr.P.C') for quashing of the proceeding being no. CS 495 of 2020 under Section 138 of the Negotiable Instrument Act, 1881(for short 'N.I. Act') pending before the Ld. 3rd Metropolitan Magistrate, Calcutta.

2. Petitioner assailed the proceeding stating inter alia that there was commercial transaction between the parties and there was pending unpaid bills from the petitioner to the opposite party for supply of paper to the petitioner for manufacturing paper diary. It is alleged that petitioner issued post dated cheques against the goods received but payments were made by cash and this was the practice. It is further alleged that opposite party /complainant had no authority to present the cheques including blank dated cheques to his banker without informing the petitioner and therefore petitioner had no obligation to make arrangement for payment. However, the case of the petitioner that every time payment was made by cash though cheques were issued in favour of the complainant by way of security. So, cheques in connection of this case were issued against surety but not against debt or other liabilities enforceable within the meaning of provision of section 139 of the N.I. Act.

3. Mr. Krishna Das Poddar, Ld. Advocate. Appearing on behalf of the petitioner refers to a case of ***M.S. Narayana Menon @ Mani Vs state of Kerala and anr. (AIR 2006 Supreme Court 3366)*** and submitted that issuance undated cheques cannot be considered as a cheque issued in discharge of debt and liability under Section 139 of the N.I. Act. In fact Mr. Poddar, emphasised on only point of 'undated cheque' and tried to make

this Court understand that proceeding under the N.I. Act cannot be initiated in relation to any undated cheques.

4. In **Mani** (supra) Hon'ble Apex Court actually dealt with a case after completion of trial and mainly focused on the issued of 'presumption' embed in section 139 of the N.I. Act. Facts of that case is not at all identical with that of ours. Hon'ble Apex Court dealt with a case where alleged cheque issued was not of the hand writing of the appellant and that apart statement of accounts pertaining to settlement did not reflect the correct accounts of the transactions and entries made therein were false.

5. Per contra, Mr. Krishendu Bhattacharya, Ld. Advocate. Appearing on behalf of the opposite party relied on a case of **Womb Laboratories PVT. LTD. Vs Vijay Ahuja (AIR On line 2019 SC 2228)** and submitted that even the cheques in question were issued by way of security would not extricate accused from discharge of liability arising from such cheques.

6. In **Womb Laboratories PVT. LTD.** (supra) Hon'ble Apex Court made an observation as follows:

“ 5. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any

debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved-that such security could not be threatened as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques.”

7. That apart in **Sripati Singh Vs State of Jharkhand (2001 SCC online SC 1002)** it was decided that :

“When a cheque is issued even though as ‘security’ the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.”

8. In Our case, it is not denied that cheques were not issued with the signature of the petitioner in favour of the opposite party. The presumption as envisaged under Section 139 is a statutory and mandatory presumption and not the discretionary presumption. The Courts has to presume and proceed on the basis of this presumption unless it is dislodged by the accused (here petitioner) on the strength leading cogent and convincing evidence in support of his claim. It is for the accused (here petitioner) to rebut the presumption contain in Section 139 of the Act.

9. Therefore, relying on the ratio of both reported decision cited on behalf of the parties to this revisional petition I have no doubt that the issued raised here is a matter of evidence in terms of Section 139 of the N.I. Act.

10. In the aforesaid view of the matter, I find no reason to stand in the way of proceeding by exercising power under Section 482 Cr.P.C.

11. Thus, the instant revisional application stand dismissed.

12. The copy of this order be communicated to the Ld. 3rd Metropolitan Magistrate, Calcutta for compliance, at once, by the department.

13. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

14. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]