



Crl.O.P.No.15132 of 2021 and
Crl.M.P.Nos.8256 & 8257 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.11.2022
Pronounced on	21.12.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.15132 of 2021 and
Crl.M.P.Nos.8256 & 8257 of 2021

Mr.Ashok Giri

... Petitioner

Vs.

Mr.D.S.Ra.P.Pratap Singh

... Respondent

PRAYER : This Criminal Original Petition has been filed to call for the records in the complaint filed by the respondent in C.C.No.3619 of 2012 on the file of the Hon'ble Fast Track Court No.1, Allikulam, Chennai and quash the same as against the petitioner.

For Petitioner : Mr.K.R.Arun Shabari

For Respondent : Mr.K.Mohan



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ORDER

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This Criminal Original Petition has been preferred to call for the records in the complaint filed by the respondent in C.C.No.3619 of 2012 on the file of the Hon'ble Fast Track Court No.1, Allikulam, Chennai and quash the same as against the petitioner.

2. The petitioner is the sole accused in the complaint given by the respondent under Section 138 of the Negotiable Instruments Act for dishonour of cheque. The respondent is an Advocate and he has filed a complaint on the allegation that the petitioner had engaged his professional legal service and he used to issue cheques to settle the fees of the respondent. In this regard, the petitioner had given a cheque for Rs.15,00,000/- on 14.01.2012 drawn on Deutsche Bank towards the part payment for the service rendered by the respondent. The respondent deposited the above cheque as per the instructions of the petitioner on 22.05.2012 with the Canara Bank, Santhome, Chennai. But it was returned on 29.05.2012 with an endorsement “payment stopped by drawer”. Subsequently, the respondent issued mandatory legal notice and thereafter filed a complaint against the petitioner under Section 138 of Negotiable Instruments Act.



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3. The petitioner has filed a petition to quash the proceedings by stating that the impugned cheque is not issued for any legally enforceable debt or liability. The respondent had fixed Rs.30,00,000/- as his professional fee for recovering the loan given by the petitioner to one S.Venkatramanan. The alleged loan amount to be given by the said S.Venkatramanan was Rs.3,00,00,000/-. The petitioner is functioning as a managing director of M/s.Vaishnovi Infrastructure Engineering Private Limited. The petitioner serving in the Company as one of its Directors for a period between 05.02.2011 and 24.08.2011. Just in order to meet out any contingency that might arise in the course of business and as a usual practice, the petitioner had kept the cheque bearing a Cheque No.155808 dated 14.01.2012 drawn for an amount of Rs.15,00,000/- without filling the name of the payee. The respondent had appropriated the cheque from the brief case of the petitioner and filled his name and deposited it in the Bank for encashment. The account of the petitioner is the joint account held in his name and his wife Mrs.Rekha Ashok. When his wife realized that the cheque was missing, she gave an instruction to the Bank to stop payment, in case the cheque is presented for collection.



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4. After coming to know about the presentation of the cheque, the petitioner had given a complaint to police on 30.05.2012, but no action has been taken. Subsequently, the respondent has issued the legal notice and for which the petitioner had sent a reply notices on 06.06.2012 and 18.06.2012. When the petitioner had asked the respondent what kind of service he has rendered to claim professional fee, the respondent claimed that he had rendered legal and professional service from November 2010 to April 2012. No proof has been produced to show what kind of service the respondent had provided in order to claim the said fee. The respondent has also filed a Civil Suit in C.S.No.87 of 2015 for recovery of money on the basis of the above cheque wherein he has alleged that one Venkatramanan had to pay an amount of Rs.3,00,00,000/- to the petitioner and for which the petitioner required the service of the respondent. In connection with the said recovery, the respondent is said to have fixed 10% of the amount as the fee (i.e) Rs.30,00,000/-. The said amount was fixed even without initiating any civil proceedings in this regard. The said suit has been transferred on the point of jurisdiction to the City Civil Court, Chennai and renumbered as O.S.No.2235 of 2015.



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5. The simple case of the respondent is that a sum of Rs.15,00,000/- has been issued as part payment for the fee fixed to him for the service to be rendered in recovering the loan obtained by one Venkatramanan from the petitioner. The petition has been filed at the time in the impugned proceedings, the complainant was examined as P.W.1.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials placed on record.

7. The learned counsel for the petitioner submitted that the petitioner is entitled to maintain the petition to quash the proceedings even though the complainant has been examined; during the cross examination, the respondent has stated that the impugned cheque has been issued only for discharging 10% out of Rs.3,00,00,000/- due from one Venkatramanan to the petitioner; since the above term itself is illegal, the cheque amount is not a legally enforceable one; the petitioner has chosen to file this petition along with the complaint that the mandate letter issued on 08.06.2011 by the respondent and accepted by the petitioner has been shown as the origin of the complaint.



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7.1. The respondent has also alleged about the complaint given by one R.A.Abdullah against the petitioner on which a case has been registered in Crime No.163 of 2012. The said FIR was quashed subsequently by virtue of the order of the High Court dated 27.07.2012 made in Crl.O.P.No.17464 of 2012; the respondent at no point of time had rendered any professional service as an advocate; hence the impugned cheque does not represent any legally enforceable debt or liability; the conduct of the respondent is violative of rules 11, 20 and 21 of Part VI, Chapter II, Section 11 of Bar Council of India Rules and Rule 3 of Legal Practitioners' Fees Rules 1973. Even if the mandate letter of the respondent dated 08.06.2011 is taken to have been accepted, the contract is void, since it is contrary to the public policy; in view of the same, the complaint itself is not maintainable.

8. The learned counsel for the petitioner attracted the attention of this Court to the averments stated by the respondent in his suit filed to recover the cheque amount in which the respondent has stated that the said fee was to recover Rs.3,00,00,000/- loan from Venkatramanan by dealing the matter both legally and politically. Even during the evidence of the respondent, he has stated that he did not take any legal action to recover the amount and he had



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not even sent any legal notice. He has stated that he himself had directly approached the Venkatramanan and got the money returned to the petitioner.

It is stated by the respondent that he approached Venkatramanan during October 2011 and during that time, Venkatramanan had told that he himself had repaid the amount to the petitioner and hence the respondent need not contact him any further.

9. The learned counsel for the respondent submitted that the conduct of the petitioner is not straight because he himself has agreed the mandate letter of the respondent; but when the cheque was collected for collection, his wife has given a letter by stating stop payment. He further submitted that the petitioner has taken a dishonest stand that the cheque was taken away by the respondent without his knowledge.

10. The record would show that Venkatramanan had repaid the amount of Rs.3,00,00,000/- even without the knowledge of the respondent. As per the letter of mandate, the petitioner is due to pay the professional fee to the respondent, only if the respondent does any service through legal means to recover the loan from Venkatramanan. If Venkatramanan himself had offered



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the repayment to the petitioner that would only show that the necessity for doing any legal service in this regard did not arise. The act of an advocate entering into an agreement to settle the fees for recovering the sum due to his client by adopting any other methods other than the legal means would not have any binding effect, in view of its anti-public policy. Even in the petitioner's evidence he has stated that he fixed 10% of Rs.3,00,00,000/- as his fee. The said 10% is the part of Rs.3,00,00,000/- which the said Venkatramanan is liable to pay to the petitioner. It is strange to see from the plaint filed by the respondent to recover the cheque amount that the petitioner had agreed to pay the fee even if the respondent had adopted legal or political means. Such kind of engagement *viz.*, rendering the service through political means does not fall under the professional service that should be rendered by an advocate.

11. Even if the respondent had adopted the legal means to recover the said amount, the fee fixed by him is exorbitant and is totally against the Legal Practitioners' Fees Rules. Had it been the fee due to the respondent for rendering any other service other than the loan meant to be recovered from Venkatramanan, it is understandable that the respondent had rendered some



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service in connection with his profession. Even in the case of rendering any legal service, the respondent has to raise bills by telling the details of each and every service rendered by him. When the petitioner wanted the respondent to furnish the service details, the respondent had stated that he had rendered so many services. But the fact remains that the mandate letter involving Rs.30,00,000/- fee is only with regard to recovery of a loan of Rs.3,00,00,000/- from one Venkatramanan to the petitioner and not for anything else. As per the standards of professional conduct and ethics prescribed under the Bar Council of India Rules, the advocate is expected to maintain certain standards while rendering service to his client. As per Rule 20 of Chapter II pertaining standards of professional conduct and ethics as found in Bar Council of India Rules, an Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share proceeds thereof. Similarly as per Rule 21, an advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. But the mandate letter of the respondent and his evidence before the Court would show that the respondent has violated the above Rules but continued to claim that the petitioner has to pay an exorbitant sum as his fees.



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12. It is to be noted that such a high fee has been claimed without rendering any service in that regard. In the proceedings stated under Section 138 of Negotiable Instruments Act, the complainant should prove *prima facie* that the impugned cheque has been issued for a legally enforceable debt or liability. In this regard, it is appropriate to refer the judgment of this Court in the case of ***C.Manohar Vs. B.R.Poornima, reported in 2004 SCC Online Mad 936*** whereas it is held as under in paragraph Nos.11 to 13 :

"11. The facts are not in dispute. The complainant claims that the amount of Rs. 43,600/- is payable by the accused who is his client who engaged him to make claim of compensation for the death of her husband in a Road accident. The case in hand is an example of the present day trend of the legal profession. Legal profession is essentially service oriented. Ancestor of today's lawyers was no more than a spokesperson, who rendered his services to the needy members of the society, by putting forth their case before the authorities. Their services were rendered without regard to remuneration received or to be received. With the growth of litigation, legal profession became a full time occupation. The trend of the legal profession has changed ... profession has almost become a trade. There is no more service orientation.

12. The relationship between the lawyer and the client is



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one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him for the same reasons. Considering the relationship between the lawyer and the client and the present day trend in the profession, it has to be carefully seen whether the complainant has proved that the amount due of Rs. 43.600/- is being payable towards him.

13. To attract the penal provisions under Section 138 N. I. Act, a cheque must have been drawn by the accused 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 due. That means, the cheque must have been issued in discharge of debt or other liability wholly or in part. The cheque given for any other reasons not for the satisfaction of any debt or other liability, even if it is returned unpaid, will not meet with penal consequences."

So if the cheque has been issued for any other reason other than towards discharging a legally enforceable debt or liability, it does not have any enforceability under Section 138 of Negotiable Instruments Act.

13. In the judgment of the Hon'ble Supreme Court in ***B.Sunitha Vs. State of Telangana and another, reported in (2018) 1 SCC 638***, it is held



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that Section 138 of Negotiable Instruments Act will not be attracted if an advocate fixes a fee on a decretal amount. In the said case, it is held as under in paragraph Nos.11 and 12.

"11. The first question which needs consideration is whether fee can be determined with reference to percentage of the decretal amount. Second question is whether the determination of fee can be unilateral⁴ and if the client disputes the quantum of fee whether the burden to prove the contract of fee will be on the advocate or the client. Third question is whether the professional ethics require regulation of exploitation in the matter of fee.

12. One of the issues was dealt with by a single Bench Judgment of the Madras High Court in C. Manohar versus B.R. Poornima⁵. R. Banumathi, J (as her Lordship then was) held that no presumption could arise merely by issuance of a cheque that amount stipulated in the cheque was payable towards fee. In absence of independent proof, issuance of cheque could not furnish cause of action under [Section 138](#) of the Act in the context 4 J.S. Vasu versus State of Punjab (1994) 1 SCC 184, para 20 5 (2004) Crl.L.J 443 of an advocate or client. The observations relevant in the context are as follows :

"11.....The case in hand is an example of the present day trend of the legal profession. Legal



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12. The relationship between the lawyer and the client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him for the same reasons. Considering the relationship between the lawyer and the client and the present day trend in the profession, it has to be carefully seen whether the complainant has proved that the amount due of Rs. 43.600/- is being payable towards him.

13. To attract the penal provisions under Section 138 N. I. Act, a cheque must have been drawn by the accused on an account maintained by him with a banker for payment of any amount of



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money to another person from out of that account for the discharge in whole or in part, of any debt or other liability due. That means, the cheque must have been issued in discharge of debt or other liability wholly or in part. The cheque given for any other reasons not for the satisfaction of any debt or other liability, even if it is returned unpaid-, will not meet with penal consequences.

14. Case of the complainant is that on behalf of the accused, he has filed claim petitions in M. C. O. P. Nos. 2339 of 1992 and 246 of 1993. Two civil cases were also filed. There is nothing to show that the complainant/Advocate himself has paid the stamp duty and bore the legal fees. The complainant has not produced any agreement showing as to what was the arrangement between him and the accused, as to how much is the fee payable and whether the accused agreed for payment of stamp duty by her counsel itself. In the absence of any agreement, Ex. P-1 cheque cannot be said to have been issued for the purpose of discharge of any substantial debt or liability. Urging the Court to raise the



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presumption under Section 139 N. I. Act, the learned counsel for the appellant has relied upon M/s. Modi Cements Ltd. versus Kuchil Kumar Nandi [(1998) 3 SCC 249] wherein the Supreme Court has held that once the cheque is issued by the drawer a presumption under Section 139 N. I. Act must follow and merely because the drawer issues a notice to the drawee (Payee) or to the Bank for stoppage of the payment it will not preclude an action under Section 138 of the Act by the drawee (Payee) or the holder of a cheque in due course. Of course, under Section 139 N. I. Act, there is a presumption that unless the contrary is proved, the holder of the cheque received the cheque for the discharge in whole or in part of any debt or other liability. But even in Section 139 N. I. Act, the legal presumption is created only for the cheque so received for the discharge in whole or in part of any debt or other liability. In the case on hand, the complainant being a practising advocate, has not proved the debt amount payable towards him by the accused, who has engaged him as his lawyer to conduct the case.



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The finding of the trial Court that there is no debt or legally enforceable liability' does not suffer from any infirmity warranting interference."

14. In the above said judgment, reference has been made to the judgment of this Court that has been referred already. By making reference about this Court's observations, **it is held that the interest of the advocate should be in the success of the litigation, but in the form of a share is unethical and it would amount to professional misconduct.** It is relevant to extract the relevant paragraphs from the above judgment as below:

"13. The Bombay High Court in Re: KL Gauba⁶ held that fees conditional on the success of a case and which gives the lawyer 6 AIR 1954 Bom 478 an interest in the subject matter tends to undermine the status of the profession. The same has always been condemned as unworthy of the legal profession. If an advocate has interest in success of litigation, he may tend to depart from ethics.

14. In G, Senior Advocate of the Supreme Court, this Court held that the claim of an advocate based on a share in the subject matter is a professional misconduct. In VC Rangadurai versus D. Gopalan⁸, it was observed that relation between a lawyer and his client is highly fiduciary in



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nature. The advocate is in the position of trust.

15. Rule 20 of Part VI, Chapter II, Section II of the Standard of Professional Conduct and Etiquette reads as follows :

“An advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.”

16. Thus, mere issuance of cheque by the client may not debar him from contesting the liability. If liability is disputed, the advocate has to independently prove the contract. Claim based on 7 (1955) 1 SCR 490 8 (1979) 1 SCC 308, para 31 percentage of subject matter in litigation cannot be the basis of a complaint under [Section 138](#) of the Act.

17. In view of the above, the claim of the respondent advocate being against public policy and being an act of professional misconduct, proceedings in the complaint filed by him have to be held to be abuse of the process of law and have to be quashed.”

15. In the judgment of the Hon'ble Supreme Court held in the case of ***Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and another reported in 2022 SCC Online SC 1376***, it is held that even though the cheque was returned for want of funds, it should be proved that the cheque



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represents a legally enforceable debt or liability. Paragraph No.29 of the above judgment reads as under:

"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."

16. It is also relevant to extract paragraph No.33 which sums up the following findings:

"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



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

- (i) 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;*
- (ii) 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;*
- (iii) 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*



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dishonoured when it is sought to be encashed upon maturity, then the offence under [Section 138](#) will stand attracted;

(iv) 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; and

(v) 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. "

17. On the same line, the Hon'ble Supreme Court has also held in the case of ***Indus Airways Private Limited and Others Vs. Magnum Aviation Private Limited and another***, reported in (2014) 12 SCC 539. Paragraph No.9 is extracted hereunder:

"9. The explanation appended to [Section 138](#) explains



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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."

18. The cumulative reading of all the above judgments of this Court and the Hon'ble Supreme Court would only show that when there is no material to prove a *prima facie* debt or liability or the materials show that the liability



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claimed is not legal, the dishonour of cheque cannot be viewed as an offence committed under Section 138 of Negotiable Instruments Act. An advocate who is expected to do professional services should not deviate from the said standard or set any other standard which does not have any legality.

19. Even it is presumed that the petitioner is not a person of good conduct, that will not strengthen the case of the respondent unless he independently proves irrespective of the character of the petitioner that the impugned cheque has been issued only for the purpose of legally enforceable debt or liability. Even according to the evidence of the respondent, the fee fixed was not to render any legal service but to adopt any means apart from the legal means to recover the said amount.

20. The respondent did not even know when the said Venkatramanan has repaid the loan to the petitioner. It appears that the interference or the involvement of the respondent was not required. Due to some understanding between the petitioner and his debtor, he got back the amount without much problem. So in the absence of any proof to show that the respondent had



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rendered any professional service, he cannot claim that the cheque issued by the petitioner towards part payment of the agreed sum would represent a legally enforceable debt or liability. The materials does not convey that there is a legally sustainable agreement between the petitioner and the respondent. Hence the letter of mandate claimed by the respondent will not be of any help to the respondent in the context of the agreement, which is not in consonance with the public policy.

21. In view of the above stated reasons, there is no reason to subject the petitioner under trial in a case filed by the respondent for the offence under Section 138 of the Negotiable Instruments Act and it will not serve any purpose. Hence I feel it is appropriate to invoke Section 482 of Cr.P.C., to quash the proceedings as not maintainable.

22. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.3619 of 2012 on the file of the learned Fast Track Court No.1, Allikulam, Chennai, is quashed.

Index: Yes/No
Speaking / Non Speaking Order
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R.N.MANJULA, J

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To

1.Fast Track Court No.1,
Allikulam, Chennai

2.The Public Prosecutor,
High Court, Madras.

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