In the High Court of Punjab and Haryana at Chandigarh

117 **CRM-M-54435-2022**
Date of Decision: 22.11.2022

Rishabh Dinesh Halwai **---Petitioner**

versus

M/s Videocon Industries Ltd. **---Respondent**

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Birinder Pal , Advocate with
Mr. Bhushan M. Oza, Advocate and
Mr. Sushant Dogra, Advocate
for the petitioner

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JAGMOHAN BANSAL,J. (ORAL)

1. The petitioner, through the instant petition filed under Section 482 Cr.P.C. is seeking quashing of complaint filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, bearing NACT No.38071 of 2019 dated 07.08.2019, pending before the JMIC, Gurugram, Haryana.

2. The brief facts, emerging from the record are that the petitioner-company in its normal course of business had handed over three cheques as security cheques to respondent-company. There was understanding between the parties that cheques would never be presented as petitioner was regularly making payments towards the goods received from the respondent-company.

On account of financial crunch, the respondent-company failed to discharge its debts, which resulted into initiation of Corporate Insolvency Resolution Process before the NCLT.

3. Learned counsel for the petitioner would submit that the matter qua insolvency is pending before NCLT, Mumbai Bench. The Resolution Professional

has presented the cheques which were handed over to respondent-company as security cheques. There was understanding between the parties that cheques would not be presented still the Resolution Professional has presented the cheques. He further submits that the cheques were security cheques, which do not fall within the definition of legally enforceable debt/liability, as contemplated under Section 138 of the Negotiable Instruments Act.

4. I have scrutinized the records and heard the arguments of learned counsel for the petitioner.

5. The present petition is bereft of merit and deserves to be dismissed.

6. The sole contention of the petitioner is that he had handed over cheques in question as security cheques and there was understanding between the parties that cheques would not be presented. The trial Court is seized of the matter and this Court while exercising its power under Section 482 Cr.P.C. cannot make roving inquiry to find out whether the cheques were issued as security cheques or in discharge of the debt. Even otherwise, it is settled principle of law that if a cheque is issued as security cheque, and there is non-payment of debt/liability, the debtor has every right to present the cheque, handed over as security cheque.

7. A two Judge Bench of Hon'ble Supreme Court in **Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and another 2022 SCC online SC 1376** has noticed question of cheques issued as security vis a vis application of Section 138 NI, Act. The Court has observed:

> *"14. It must be noted that when a part-payment is made after the issuance of a post-dated cheque, the legally enforceable debt at the time of encashment is less than the sum represented in the cheque. A part-payment or a full payment may have been made between the date when the debt has accrued to the date when the cheque is sought to be encashed. Thus, it is*

crucial that we refer to the law laid down by this Court on the issuance of post-dated cheques and cheques issued for the purpose of security. In ***Indus Airways Private Limited v. Magnum Aviation Private Limited (2014) 12 SCC 539,*** *the issue before a two-Judge Bench of this Court was whether dishonour of post-dated cheques which were issued by the purchasers towards 'advance payment' would be covered by Section 138 of the Act if the purchase order was cancelled subsequently. It was held that Section 138 would only be applicable where there is a legally enforceable debt subsisting on the date when the cheque is drawn. In* ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458****, the respondent advanced a loan for setting up a power project and post-dated cheques were given for security. The cheques were dishonoured and a complaint was instituted under Section 138. Distinguishing* ***Indus Airways (supra),*** *it was held that the test for the application of Section 138 is whether there was a legally enforceable debt on the date mentioned in the cheque. It was held that if the answer is in the affirmative, then the provisions of Section 138 would be attracted. In* ***Sripati Singh v. State of Jharkand 2021 SCC online SC 1002*** *this Court observed that if a cheque is issued as security and if the debt is not repaid in any other form before the due date or if there is no understanding or agreement between the parties to defer the repayment, the cheque would mature for presentation:*

> *17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque*

as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow. 18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. 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.

(emphasis supplied)

15. Based on the above analysis of precedent, the following principles emerge:

(i)Where the borrower agrees to repay the loan within a specified timeline and issues a cheque for security but defaults in repaying the loan within the timeline, the cheque matures for presentation. When the cheque is sought to be encashed by the debtor and is dishonoured, Section 138 of the Act will be attracted;

(ii)However, the cardinal rule when a cheque is issued for security is that between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode. It is only where the loan is not repaid through any other mode within the due date that the cheque would mature for presentation; and

(iii)if the loan has been discharged before the due date or it there is an 'altered situation', then the cheque shall not be presented for encashment."

8. In view of the above findings and judgment of the Hon'ble Supreme Court in **Dashrathbhai Trikambhai Patel (supra),** there is no ground to interfere with the proceedings pending before the learned trial Court.

9. The petitioner is at liberty to raise all his pleas before the trial Court.

10. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.11.2022
paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No