

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23251-2015
Date of Decision:- 16.01.2023

M/S ANIL AGRO INDUSTRIES & ANOTHER

.....Petitioners

Versus

M/S BHODAY STEEL ROLLING MILLS

.....Respondent

CRM-M-36782-2014

SUDHA MITTAL

.....Petitioner

Versus

M/S BHODAY STEEL ROLLING MILLS

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Avnish Mittal, Advocate with
Ms. Ishika Jain, Advocate
for the petitioner(s).

Mr. Prateek Gupta, Advocate and
Mr. Nitin Gupta, Advocate
for the respondent(s).

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-23251-2015 titled as M/s Anil Agro Industries & Another Versus M/s Bhoday Steel Rolling Mills and CRM-M-36782-2014 titled as Sudha Mittal Versus M/s Bhoday Steel Rolling Mills. For the sake of convenience, the facts are being taken from CRM-M-23251-2015 as both these petitions are arising out of the same complaint and summoning order.

2. The present petitions have been filed under Section 482 Cr.P.C. for quashing of the criminal complaint No.105-A dated 24.04.2013 (Annexure P-1) under Section 138 of Negotiable Instruments Act, 1881,

summoning order dated 24.10.2013 (Annexure P-3) passed by the Court of Judicial Magistrate, 1st Class, Amloh, District Fatehgarh Sahib, the accusation order dated 06.08.2014 (Annexure P-2) along with all subsequent proceedings arising therefrom.

3. The brief facts as emanating from the pleadings are that the accused/petitioners purportedly availed a loan from the complainant/respondent for the purposes of business of their firm accused No.1. The accused agreed and assured to repay the said loan amount along with interest @ 12 % per annum to the complainant/respondent. As per the assurance given by the accused, the complainant advanced a loan to the accused @ 12 % per annum. The total loan availed by the accused was Rs.15,00,000/- vide Cheque no.3162767 dated 03.08.2011 for an amount of Rs.7,00,000/- and Cheque no.592801 dated 08.08.2011 for an amount of Rs.8,00,000/-.

Over a period of time, the accused are stated to have paid back some part of the loan advanced along with interest to the complainant/respondent after deducting TDS and the records of the same were entered into the account books of the accused and the complainant. After adjusting the account between themselves, as on 31.03.2012, an amount of Rs.10,74,250/- remained to be paid by the accused to the complainant. As on 31.12.2012, the amount increased to Rs.11,70,933/-. With a view to discharge their legal liabilities, a cheque No.043464 dated 08.01.2013 for a sum of Rs.11,50,000/- drawn on Union Bank of India, Branch Mandi Gobindgarh was issued in favour of the complainant/respondent. The accused Sachin Mittal purportedly signed the cheque, whereas the accused Sudha Mittal purportedly signed the material alterations on the said cheque. However, the complaint does not mention

the factum of alterations.

The said cheque was dishonoured on account of the fact that there was material alteration in the cheque and it required the full signatures of the drawer. Thereafter, it was presented once again and the reason for the subsequent dishonour was that the account had been closed. It may be mentioned here that only the subsequent dishonour is spoken off in the complaint.

Thereafter, a legal notice was served upon the accused and pursuant thereto, the complaint under Section 138 of Negotiable Instruments Act came to be filed on 24.04.2013. The copy of the complaint is annexed as Annexure P-1 to the petition.

Pursuant to the filing of the complaint, the accused/petitioners came to be summoned for having committed the offence under Section 138 of Negotiable Instruments Act. The copy of the summoning order dated 24.10.2013 is annexed as Annexure P-3 to the petition.

Thereafter, notice of accusation was served upon the accused on 06.08.2014. The copy of the said accusation is annexed as Annexure P-2 to the petition.

4. The aforementioned complaint, summoning order and notice of accusation along with subsequent proceedings are under challenge in these petitions.

5. The main contention raised by the learned counsel for the petitioner is that there is material alteration and interpolation in the cheque which was in contravention of the RBI Guidelines. A copy of the said guidelines/instructions are annexed as Annexure P-4/A to the petition.

The signatures of Sudha Mittal (petitioner in CRM-M-36782-2014) at four places are different. The name of the beneficiary has been

changed/alterd after making over-writings/cuttings. CW1-Balwinder Singh, Clerk, Union Bank of India, Branch Mandi Gobindgarh has stated in his cross-examination that the cheque had been returned/dishonoured for the first time on account of cancellation/alteration in the cheque and the same required the full signatures of the drawer. As per the report dated 05.09.2014 (Annexure P-5) of the Handwriting Expert, the cheque in question was forged and fabricated. It is therefore, the case of the petitioner (CRM-M-23251-2015) that as the cheque was forged and fabricated, no offence under Section 138 was made out.

With respect to the case of Sudha Mittal (petitioner in CRM-M-36782-2014), it is in addition, pleaded that she was only the mother of accused No.2 (Sachin Mittal). She was neither a partner nor a proprietor of the said firm M/s Anil Agro Industries and as such the complaint was not maintainable against her.

6. The respective replies have been filed by the respondent/complainant in both these petitions. As per the reply dated 11.12.2015 in CRM-M- 23251-2015, petitioner No.2-Sachin Mittal was the sole proprietor of petitioner No.1 proprietorship firm. The petitioner No.2 Sachin Mittal along with his mother Sudha Mittal (petitioner in CRM-M-36782-2014) were actively involved in the business and daily functioning of the accused concern. Though, the cheque was drawn and signed by the accused Sachin Mittal, however, alterations were made on the said cheque which were duly signed by Sudha Mittal. Sachin Mittal, petitioner No.2, proprietor of petitioner No.1 had executed a Special Power of Attorney dated 16.06.1995 in favour of his mother authorizing her to sign cheques on his behalf with respect to the account maintained at Union Bank of India, Mandi Gobindgarh. The copy of the Special Power of Attorney is annexed

as Annexure R2/1.

The cheque in question along with the alterations had been handed over to the answering respondent by the accused and there was no reason for the complainant to make alterations/changes on the said cheque to his own detriment. The report of the handwriting expert produced by the accused/petitioner could not be relied upon at this stage in summary proceedings under Section 482 Cr.P.C. and the petitions raised disputed questions of fact. Deliberate cancellations and alterations were made on the cheque and each of those cancellations/alterations bore the signature of Sudha Mittal (petitioner in CRM-M-36782-2014). It was thus, pleaded that the present petitions being devoid of merit ought to be dismissed.

7. The learned counsel for the petitioners states that the present complaint has not been filed disclosing the true facts. The cheque in question was materially altered, forged and fabricated as is borne from the report of the handwriting expert (Annexure P-5). Taking the allegations to be true, the alterations bore the signatures of Sudha Mittal and not Sachin Mittal who is the signatory to the cheque. Merely being a signatory to the bank account would not sanctify a cheque signed by Sachin Mittal and purportedly signed by Sudha Mittal on the alterations. For a materially altered cheque to be valid tender, it must be signed by the executant or the drawer of the cheque and no other person even though, the said other person was a co-signatory to a bank account and authorized to sign cheques. Most importantly reading Section 87 of the NI Act with the RBI Regulations it was apparent that only the date on the cheque could be altered. Any other alteration was completely impermissible. Strangely, the complaint does not disclose the fact that the earlier dishonour was on account of material alterations allegedly signed by Sudha Mittal requiring

the full signatures of the drawer. It only refers to the subsequent dishonour which was on account of the fact that the account was closed. The complainant would never accept a materially altered and forged cheque from the accused. In fact, nothing prevented the complainant from asking the accused to provide a fresh cheque.

So far as Sudha Mittal (petitioner in CRM-M-36782-2014) is concerned, she is neither a partner nor a proprietor of M/s Anil Agro Industries, accused No.1. She is also not the drawer of the cheque. Her purported signatures on the alterations cannot affix any liability upon her.

8. The learned counsel for the respondent/complainant on the other hand vehemently contends that whether there was material alteration with consent or not was a disputed question of fact. It was the case of the complainant that the cheque had been handed over with the alterations, though, he admits that there is no such averment in the complaint. Since Sudha Mittal was a co-signatory and authorized to sign cheques in terms of the Special Power of Attorney (Annexure R2/1), her signatures on the material alterations would make the cheque a valid tender thereby entitling the complainant to initiate proceedings under Section 138 of Negotiable Instruments Act.

9. I have heard the learned counsel for the parties at length.

10. Before proceeding in the matter, it would be apposite to examine the relevant provisions of law in this regard:-

Section 7 of the Negotiable Instruments, reads as under:-

7. “Drawer”, “drawee”. —*The maker of a bill of exchange or cheque is called the “drawer”; the person thereby directed to pay is called the “drawee”.*

“Drawee in case of need”.—*When in the bill or in any indorsement thereon the name of any person is given in*

addition to the drawee to be resorted to in case of need such person is called a “drawee in case of need”.

“Acceptor”. —*After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”.*

“Acceptor for honour”. — *[When a bill of exchange has been noted or protested for non-acceptance or for better security], and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.*

“Payee”. —*The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee”.*

Section 27 of the Negotiable Instruments, reads as under:-

“27. Agency.—*Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.*

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.”

Section 87 of the Negotiable Instruments, reads as under:-

87. Effect of material alteration.—*Any material alteration of a negotiable instrument renders the same void as against any one 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 138 of the Negotiable Instruments, reads as under:-

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 or other liability” means a legally enforceable debt or other liability.

11. The various judgments of the High Court and the Hon’ble Supreme Court as have been cited by the counsel for the parties are discussed

hereinbelow:-

In Smt. Veena Singhal Versus State of U.P. & another, 2020(1) NIJ 72, where the “Thous” was changed to “lacs” without the counter-signs of the executant of the cheque, the Court quashed proceedings holding that the cutting amounted to material alteration and was violative of RBI Guidelines. (an SLP No.10549/2019 is pending before the Hon’ble Supreme Court titled as Sanjay Kumar Gupta Versus The State of Uttar Pradesh & another). The relevant paragraphs of the said judgment are as under:-

7. At the time of argument, learned counsel for the applicant has mainly emphasised three points that the cheque in question is not a legally enforceable instrument in the light of guidelines issued by the R.B.I. dated 6.10.2010, clause 9 of which prohibits changes/corrections in the cheque. The said guidelines have been affirmed in Central Bank of India v. Ravindra and other, (2002) 1 SCC 367 and also in Fragrant Leasing & Finance Company Ltd. & Anr. v. Jagdish Katuriya & Anr., 2007 Cri.L.J. 3880.

8. Clause 9 of the said guidelines is as follows:-

"R.B.I. has made specific provision under the power conferred to them in Payment & Settlement System Act, 2007 which reads as:- "No changes/corrections should be carried out on cheque (other than for date validation purposes, if required). For any cheque in the payee's name, courtesy amount (amount in figure) and legal amount (amount in words), fresh cheque form should be used by customers. This would help banks to identify and control fraudulent transactions."

9. In rebuttal of this argument, learned counsel for the opposite party no. 2 has drawn attention to the paragraph 10 of the same guidelines in which Sub-clause 10 (iii)(iv) stipulates as follows:-

(iii) Will be applicable only for cheques cleared under the image-based Cheque Truncation System (CTS). Collecting banks should ensure, ab-initio, that such cheques are not

accepted for presentment in CTS.

(iv) Is not applicable to cheques cleared under other clearing arrangements such as MICR clearing, non-MICR clearing, over the counter collection (for cash payment) or direct collection of cheques outside the Clearing House arrangement."

10. In Central Bank of India (supra), the Hon'ble Apex Court has held that R.B.I. Circulars have statutory force and it is on this interpretation that the learned counsel for the applicant has relied upon that this would make the guidelines mentioned above to be binding and any violation of the same would render the impugned cheque to be not a valid instrument.

11. The facts of the above citation are that it involved interpretation of phrases " the principal sum adjudged" and "such principal sum", occurring in section [34](#) of the CPC, 1908 as amended by Act 66 of 1956. It was held by the Hon'ble Supreme Court that it is a long established banking practise of charging interest at a reasonable rates on periodical rests and capitalising the same on remaining unpaid. This practise is permissible, legal and has been judicially upheld except when superseded by legislation. The facts of the present case are that there is a cutting found in the impugned cheque, which cutting was also not found signed by the person, who had issued the same.

12. The reply of the argument of learned counsel for the applicant that the said guideline no. 9, on which, applicant is relying upon to state that the said cheque has become invalid only on account of said cutting is that the said kind of cutting is impermissible only in respect of cheques cleared under the Cheque Truncation System (CTS) and not for those cheques which are cleared under other clearing arrangement such as MICR clearing, Non-MICR clearing, over the counter collection (for cash payment) or direct collection of cheques outside the Clearing House Arrangement", but, I find no force in the argument of learned counsel for the opposite party no. 2 because the established practise of Bank is that any alteration in original state of a cheque such as date, amount, payee's

name, changing word "order" to bearer appearing after payee's name or in endorsement is called material alteration. All material alteration must have drawer's approval with his full signature (not initials) where the alteration are made. One of the mandatory features of the CTS-2010 cheque format prescribed by R.B.I. is that no changes/corrections should be carried out on the cheques (other than for date validation purposes, if required) for any change in the payee's name, courtesy amount (amount in figure) or legal amount (amount in words) etc., the fresh cheque forms should be used by the customers. In the present case, when cheque of such a huge amount was drawn in favour of opposite party no. 2 and it was found to have cutting, which was not signed in full by the accused-applicant, the opposite party no. 2 should have objected to taking the said cheque at the very outset, more so, in condition when the amount in question was huge.

13. Attention may also be drawn to section 87 of the N.I. Act which provides as under:-

"87. Effect of material alteration.-Any material alteration of a negotiable instrument renders the same void as against any one 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 endorsee, 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."

14. In view of above provision, I find that this would fall in the category of material alteration of the impugned cheque.

15. Learned counsel for the applicant has relied upon Fragrant Leasing & Finance Company Ltd. & Anr. v. Jagdish Katuriya & Anr., 2007 CRI.L.J. 3880. In this case, accused took loan of Rs. 11,00,000/- from complainant no. 1 and in order to repay the loan, issued two cheques of Rs. 6,00,000/- and 5,00,000/-

respectively, (total 11 lacs), which were presented at the Central Bank of India in Varanasi but were returned with endorsement "exceeded arrangement". Meaning thereby that the accused had issued cheque knowing well that there was no sufficient amount in his account and with dishonest intention deceived the complainant, hence the case was initiated under 138 of the N.I. Act. In paragraph 8 of this judgment, the court after consideration has held that material alteration was made in the cheques introducing the dates, hence cheques were void under Section 87 of the Act and it was also held in paragraph 22 of the judgment that it is a settled law that a person, who is in custody of document subsequent to its execution, has to discharge the burden of establishing that it was not altered, should there be any alteration.

16. Facts of the present case may be taken to be identical to the citation relied upon by the learned counsel for the accused-applicant because in the present case also cheque is stated to have been returned for insufficient amount and not for any alteration or cutting in the cheque but no explanation has come on record that why the impugned cheque was received by the opposite party no. 2 despite the said cheque having alteration in the amount in words without any signature of the executant of the cheque and why it was not insisted by him at that very moment that the said cheque was void under the provisions of Section 87 of the Act due to the said cutting particularly when the amount was so big. He would be treated to be in possession of the said cheque soon after the same was issued to him and when he came in possession of the same, if any alteration in the said cheque happened, the burden would lie only on him to explain as to under what circumstances the said cutting took place but in counter affidavit, no such disclosure has been made, which renders the impugned cheque to be a void instrument in the light of Section 87 of the Act.

25. There is no quarrel with the principle laid down above as I am fully in agreement with the view that whether or not cheque was issued for discharging a debt or liability can be seen at

the time of trial and not in proceeding before this Court under Section 482 Cr.P.C., 1973 but the question remains in the present case that the impugned cheque itself appears to be void on account of there being cutting, which renders the said cheque to be void under the provisions of section 87 of the N.I. Act, as has been discussed by me above and hence, the subsequent proceedings in opinion of this Court would not serve any purpose, hence in view of this peculiar situation in this case, I consider it appropriate to quash the impugned order.

(emphasis supplied)

In **M/s Goyal Enterprises Versus State of Jharkhand, 2012(3)**

R.C.R. (Criminal) 110, the Court held that change of date on the cheque amounted to material alteration in the absence of the signature of the drawer.

The relevant paras of the said judgment held as under:-

11. After hearing learned counsels for both the sides and upon going through the materials on record, I find that the cheques which have been proved in this case clearly show that there are material alterations in the same in as much as, the date 15.4.2000 in both the cheques have been altered as 15.9.2000 and there is no endorsement or signature thereon of the drawer of the cheques. Section 87 of the Negotiable Instruments Act reads as under :

"87. Effect of material alteration. - Any material alteration of a negotiable instrument renders the same void as against any one 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;

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12. Section 87 of the Negotiable Instruments Act is a mandatory provision and in this view of the matter, the cheques which were materially altered before production in the Court and without any evidence to the effect that how the said alterations in the cheques were made, were absolutely

void and the accused could not have been found guilty of the offence under section 138 of the Negotiable Instruments Act on the basis of the said void cheques. In view of this finding, the other arguments made by the learned counsel for the appellant now remain only of academic importance, which need no further discussion in the present case.

13. In view of the aforementioned discussions, I find and hold that the respondent accused could not have been found guilty of the offence under section 138 of the Negotiable Instruments Act on the basis of the said void cheques which have been produced in the Court below and marked Exhibits 1/1 and 1/2, there being material alteration in the dates of the cheques.

(emphasis supplied)

In **Allampati Subba Reddy Versus Neelapareddi Ramanareddi, 1996 AIR (Andhra Pradesh) 267,** there was material alteration in the date of the promissory note. The Court observed that where an instrument appears to have been altered, it was a general rule that a party offering it in evidence was to explain its appearance because every alteration of a negotiable instrument rendered it suspicious. The relevant para 5 of the judgment held as under:-

5. The law on the point seems to me to be clear. The English rule that a material alteration of a date makes it altogether void is summarised thus in Halsbury's Law's of England, III Edition. Vol. 11, p. 367, Paras. 598 and 599 :-

"598. A writing proposed to be executed as a deed may be altered by erasure or interlineation or in any other way before it is so executed; and any alteration so made before execution does not affect the validity of the deed. Any alteration, erasure or interlineation appearing upon the face of a deed is presumed, in the absence of evidence to the contrary, to have been made before the execution of the deed."

"599. If an alteration (by erasure, interlineation, or otherwise) is made in a material part of a deed, after its ex-

ecution, by or with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. The avoidance, however, is not ab initio, or so as to nullify any conveyancing effect which the deed has already had; but only operates as from the time of such alteration, and so as to prevent the person, who has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce against any party bound thereby, who did not consent to the alteration, any obligation, covenant, or promise thereby undertaken or made."

6. The law is not otherwise in India. The above said rule is quoted with approval in several Indian decisions. section 87 of the Negotiable Instruments Act statutorily adopts the said rule. Section 87 is so far as it is relevant is in the following terms :-

"Any material alteration of a negotiable instrument renders the same void as against any one 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;"

It must be remembered that it is not any and every alteration that avoids the instrument. To have that effect the alteration must be in a material particular. A material alteration can be brought about by change in date or time of drawing or of the place of payment or by change in the sum payable, etc., etc. It is thus evident that the date of a promissory note is a material portion of it, and any alteration of such date will naturally avoid the promissory note, unless, of course, as stated in the Section, such an alteration is made with the consent of the other party, or is made to effectuate the common intention of the original parties. It is wrong to assume that the date of the promissory note is merely a description. It indicates the time when the promissory note was executed. In most cases the date is very material in calculating the date of the performance of the contract and more often fixing the period of limitation within which the plaintiff will have to institute the suit on the

foot of such promissory note. It is immaterial whether the alteration is made in the date or month or year. Any such alteration being material must necessarily result in the avoidance of the promissory note.

7. It is true that in two cases alterations, though material, do not vitiate the instruments firstly, when the alteration is made before the promissory note is executed, and secondly, if the alteration made was merely to correct a mistake, or to make it what it was originally intended to be. As stated earlier, the Section (S. 87) itself states that the alteration can be made with the consent of the parties, or to carry out the common intention of the original parties. Any mistake occurring before the execution of the promissory note can, however, always be corrected before the document is actually executed.

8. The general rule in English law followed in India is that a party having custody or control of a document produced in evidence must explain the alteration. When the instrument on its production appears to have been altered, it is a general rule that the party offering it in evidence must explain its appearance, because every alteration in the case of a negotiable instrument renders it suspicious. It is only reasonable that the party claiming under it should remove the suspicion. It is true that it is not on every occasion that a party tendering an instrument in evidence is bound to explain any material alteration that appears upon its face. He must, however, explain when he is seeking to enforce it. It is plain that when the alteration appears to have been made contemporaneously with the document, or if it is made at some subsequent period with the privity of the parties charged and there is no fraud, it does not affect the validity of the instrument.

9. It is thus evident that where the instrument appears to be altered it is incumbent upon the holder, that is, the plaintiff, to show that the alteration is not improperly made. It is now fairly settled that in case of negotiable instrument the presumption is that the alteration was made subsequent to the issue of instrument. What must follow is that when a

promissory note appeal's to have been altered or there are marks of erasures on it, the party seeking to enforce the promissory note is bound to satisfy the Court that alteration does not avoid the promissory note by explaining how the alteration has been effected. If it falls under any one of the exceptions mentioned above, it is obvious that such, an alteration will not fall within the mischief of section [87](#) of the Negotiable Instruments Act.

10. Where an instrument appears to be materially altered the lay, naturally casts a heavy burden on the plaintiff to explain the alteration and show when it was made. Ordinarily the party who presents a negotiable instrument which is an essential part of his case in an apparently altered and suspicious state, must fail, from the mere infirmity or doubtful complexion of the instrument unless it can satisfactorily explain the existing state of the document: See Mt. Khoob Conwar v. Baboo Moodnarin Singh, (1861-63) 9 Moo Ind App 1 at p. 17 (PC). It is true that this wholesome rule is not without its exceptions. If there be, for example, independently of the instrument corroborative proof strong enough to rebut the presumption which arises against an apparent and presumable falsifier of evidence, there must however, be an explanation and such a strong proof to rebut the initial presumption. It is relevant to note that the presumption under the English Law is that in the case of deeds signed and sealed, alterations were made before execution, but no such presumption exists in the case of negotiable instruments. The law on the subject has been thus stated in the Halsbury's Laws of England. III Edition, Vol. 11. Para. 622, p. 379 :-

"A writing which is intended to be under hand only can be altered by erasure, or interlineation, or otherwise, before it is signed, but it lies upon the party who puts the instrument in suit to explain an alteration and show when it was made."

That being the position of law as I understand it, let me see whether any explanation was offered by the plaintiff about the suspicious nature of the suit promissory note. I have already

stated that on examination of the document it becomes clear that there are marks of erasure and the figure '9' is re-written in the manner in which it is mentioned above. There can be little doubt that the date which is material looks to be altered. In such circumstances it was for the plaintiff who seeks to enforce this promissory note to explain to the Court as to when and how this alteration was made. The plaintiff in his deposition denies any correction, he has no explanation to offer in case it is found that the date appears to be materially altered. In the absence of any explanation on behalf of the plaintiff who seeks the enforcement of the document, it is obvious that the plaintiff must fail, as the onus was on him to show that the material alteration was made either with the consent of the parties or in order to effectuate the common intention of the parties. In the absence of any such plea the presumption, as stated earlier, is that the material alteration was made subsequent to the execution of the document. In view of that presumption the irresistible conclusion is that the suit promissory note is void under section 87 of the Negotiable Instruments Act and it cannot, therefore, be enforced in a Court of law. In, Herman v. Dickinson, (1828) 130 ER 1031, it was held as follows :-

". where an alteration appears upon the face of a Bill the party producing it must show that the alteration was made with consent of the parties, or before issuing the bill."

To the same effect is C.S. Pillay v. K.K. Konar, AIR 1935 Rangoon 131. I am therefore, satisfied that the plaintiff has failed to offer any explanation, and also failed to prove that the material alteration appearing on the face of the promissory note was made with the consent of the parties, or was made in order to effectuate the common intention of the parties. His suit, therefore, was rightly dismissed on the ground. This revision petition, therefore, is dismissed. In the circumstances of the case I leave the parties to bear their own costs of both the Courts.

Revision dismissed.

(emphasis supplied)

In **Raghu Lakshminarayanan Versus M/s Fine Tubes, 2007(2) R.C.R. (Criminal) 571**, the Hon'ble Supreme Court held that in a proprietorship concern, only the proprietor was liable under Section 138 of the Negotiable Instruments Act and no employee could be prosecuted, since a proprietary concern was not a juristic person and the principles of vicarious liability would not apply to it as to a company.

In **Veera Exports Versus T. Kalavathy, (2002) 1 SCC 97**, the complaint was quashed on the assertion of the accused that she had changed the date on the cheque against her will. The Hon'ble Supreme Court set aside the order of the High Court whereby the complaint was quashed holding that whether the accused had re-validated the cheque by will or not was a matter of trial.

In **Arpan Jain & another Versus State & another, 2021 SCC OnLine Del 4222**, the contention of the petitioners/accused was that the cheque had been given as a security. The same was altered materially by the complainant by changing the date for re-validation without the consent and knowledge of the petitioners/accused. The Court held that it was a triable issue as to whether the complainant had altered the cheque or the same had been done by the accused/petitioners. A similar view was expressed in **R. Arjunraj Versus V. Krishnasamy, 2017 SCC OnLine Mad 3462**.

In **M.M.T.C. Ltd. & Another Versus Medchl Chemicals and Pharma (P) Ltd. & another, (2002) 1 SCC 234**, it was held that whether or not the cheque was issued for the discharge of any legally enforceable debt or liability would be a matter of trial. The complaint could not be quashed on the pleadings under Section 482 Cr.P.C. that there was no such debt or liability.

In **Bir Singh Versus Mukesh Kumar, (2019) 4 SCC 197**, it was

held that a blank signed cheque leaf handed over by the accused to the complainant would attract the presumption under Section 139 of the Negotiable Instruments Act in the absence of any cogent evidence to show that the cheque had not been issued for the discharge of a debt or liability. If the cheque was otherwise valid, the penal provisions would be attracted.

In *NEPC Micon Ltd. & others Versus Magma Leasing Ltd., (1999) 4 SCC 253*, the Hon'ble Supreme Court held that where the cheque had been dishonoured because the account had been closed, the same would attract liability under Section 138 of the Negotiable Instruments Act.

12. Coming back to the facts of the present case, the complaint does not disclose that the cheque was materially altered or that it was dishonoured first time due to a material alteration or as to how and at what stage did Sudha Mittal purportedly sign/counter-sign the material alterations.

A perusal of the CTS Cheque (Annexure P-4) would reveal cutting on the name of the beneficiary and the amount in words. There appears to be an overwriting on the amount in figures as well. Therefore, in terms of the RBI Guidelines dated 22.02.2010 (Annexure P-4/A) which have statutory force, read with Section 87 of the Negotiable Instruments Act, the cheque was not valid tender and could never have been presented for encashment even assuming that the material alterations were signed by Sudha Mittal and assuming that she was competent to sign the same despite the fact that she was not an executant of the cheque.

A combined reading of the RBI Guidelines along with Section 87 of the Negotiable Instruments Act would show that the only permissible material alteration is on the date of the cheque which must also be signed by the executant/drawer of the cheque namely, Sachin Mittal. Further, a perusal of Section 27 of the Negotiable Instruments Act would show that Sudha Mittal purportedly acting as an agent was not conferred with the power of accepting

or indorsing bills of exchange so as to bind the principal i.e. Sachin Mittal.

Though, the cheque has been dishonoured due to closure of the bank account, since the very cheque in question is materially altered and had been returned back first time on the grounds of material alteration, the provisions of Section 87 of the Negotiable Instruments Act and the RBI guidelines would apply rendering the cheque void, moreso, when the complaint does not explain as to how the materially altered cheque came into the possession of the complainant. Further, in reply to this petition for quashing, the stand of the complainant is that the materially altered cheque had been handed over to him which he presented for encashment. Once again, he chooses to sidestep the issue of the earlier dishonour on account of material alterations which had been admitted by CW1-Baljinder Singh, Clerk, Union Bank of India in his cross-examination. There is absolutely no explanation as to why he would accept such a materially altered cheque and not ask for a new one to be issued.

It may also be relevant to mention here that the judgments quoted by the learned counsel for the respondent/complainant do not discuss the RBI Circular dated 22.02.2010 (Annexure P-4/A) and pertained primarily to cases prior to the year 2010 i.e. the date of the Circular. In the present case, the cheque is dated 08.01.2013 (Annexure P-4) and therefore, as has already been submitted hereinabove, the material alteration permitted is only on the date and nothing else.

In addition, in the case of Sudha Mittal, she is neither a partner nor proprietor of the firm M/s Anil Agro Industries. She is also not a signatory/drawer of the cheque. The bank account is in the name of the proprietorship concern and Sudha Mittal is simply an authorized signatory for the issuance of cheques out of the said bank account. Therefore, the

complaint, summoning, notice of accusation and all subsequent proceedings are liable to be quashed qua her on this ground as well.

13. Keeping in view the aforementioned discussion, the continuation of the proceedings in the present cases would be nothing but an abuse of the process of the Court. Therefore, the complaint No.105-A dated 24.04.2013 (Annexure P-1), the summoning order dated 24.10.2013 (Annexure P-3), the notice of accusation dated 06.08.2014 (Annexure P-2) and all subsequent proceedings arising therefrom are hereby quashed qua all the accused.

16.01.2023

Jitesh

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No