



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 03.07.2023

+ **CRL.M.C. 6722/2022 & CRL. M.A. 26135/2022**

VERSHA NEGI

..... Petitioner

versus

**STATE OF NCT DELHI THROUGH SHO PS
SHAKARPUR DELHI & ANR. & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Anil Tejan & Ms. Lalita, Advs.

For the Respondents : Ms. Richa Dhawan, APP

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HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**) *inter alia*, praying for quashing of the Criminal Complaint bearing number 1169/2018, under Section 138 r/w Section 142 of the Negotiable Instruments Act, 1881 (**'NI Act'**), titled **'Corporation Bank v/s Mrs. Versha Negi'** and for quashing of proceedings emanating therefrom.

2. The relevant facts for the purpose of adjudication of the present petition are as follows: -



2.1 Complainant / Respondent No.2 herein, Corporation Bank is a bank as defined under the Banking Regulation Act 1949, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, engaged in the business of finance among other portfolios subject to the guidelines of Reserve Bank of India.

2.2 It is alleged that following the representation made by the accused / petitioner herein for availing home loan facility, the complainant/ Respondent No.2, believing the same to be true, sanctioned and disbursed an amount of ₹25,63,825/- on 08.12.2015, through the home loan account no.150140. The petitioner thereafter issued some undated blank cheques duly signed in favour of Respondent No.2 authorizing it to deposit the same when the necessity arises in lieu of the liability to repay the home loan.

2.3 It is further alleged that when the petitioner defaulted in making regular monthly installments/ EMIs in terms of the subject agreement, Respondent No.2 presented the cheque bearing No.000025, dated 18.01.2018 for a sum of ₹2,57,966/-, drawn on HDFC Bank to recover the outstanding dues but the same was returned unpaid for the reason “Funds Insufficient” vide a return memo dated 19.01.2018.

2.4 Thereafter, the complainant issued a statutory demand notice dated 03.02.2018, calling upon the petitioner to pay the legally enforceable debt. Despite receiving the said notice, the petitioner did not make the requisite payment within the stipulated period of 15 days. Consequently, Respondent No.2, instituted a complaint under Section 138, read with Section 142 of the NI Act being C.C. No. 11169/2018.



After considering the material on record and pre-summoning evidence, the learned Trial Court thought it fit to summon the petitioner by order dated 16.03.2018 for the offence punishable under Section 138 NI Act.

2.5 Aggrieved with the abovementioned order dated 16.03.2018, passed by the learned Metropolitan Magistrate ('hereafter MM'), the petitioner preferred the present petition under Section 482 of the CrPC

SUBMISSIONS

3. Learned counsel for the petitioner submitted that when the Petitioner came to know about the construction of a building with a vacant flat for sale in Gurgaon, she contacted Maltha Realtors. However, she could not buy the said apartment because she lacked the necessary funds to which the director of Maltha Realtors responded that he has personal contact with the corporation bank, and the home loan would likely be approved shortly after the bank received supporting documentation from the petitioner.

4. Learned counsel submitted that the petitioner had regularly paid the bank installments and since Maltha Realtors did not deliver the physical possession of the apartment to the petitioner, her legal liability for the repayment of the loan towards the bank did not become effective.

5. It is further submitted on behalf of the learned counsel that the blank cheques were given for the repayment of the home loan in EMI/installments and not for the total outstanding amount. Therefore, Respondent No.2 misused the cheque by filling in the particulars on its own accord and without prior intimation. It is further submitted that the cheque amount presented by Respondent No.2 did not exclude the EMIs already paid by the petitioner. In support of the submission, learned



counsel appearing on behalf of the petitioner relied upon the judgment of the Hon'ble Supreme Court: *Indus Airways Private Limited and Others v. Magnum Aviation Private Limited and Another* : (2014) 12 SCC 539.

6. The present petition is opposed by the learned counsel for the respondents primarily on the ground that this is not a fit case for the court to exercise its extraordinary jurisdiction vested under Section 482 of the CrPC and that the arguments advanced by the petitioner are to be considered during the trial.

CONCLUSION

7. In the instant case, the respondent bank/complainant had filed a complaint under Section 138 of the NI Act on 12.03.2018. The learned MM relying upon the complaint, which was supported with pre-summoning evidence given by the respondent/complainant, took cognizance under Section 138 of the NI Act and passed the summoning order dated 16.03.2018.

8. The issuance of the cheque is not disputed by the petitioner, and there is no dispute that the cheque belongs to the petitioner.

9. The transactional/loan arrangement between the petitioner and the complainant reveals the nature of obligations that both the parties had undertaken. The cheque in question was accepted by the complainant towards the home loan advanced to the petitioner to be repaid in installments.

10. It will be appropriate to reproduce the statutory provision in question, which is as follows:



“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. Section 138 specifically mentions that the cheque issued for the discharge of “debt” and “other liability”. It is therefore, not necessary that when the cheques are issued, the drawer had any debt to discharge on the date of issuance. The debt or any liability is to exist when the cheque in question is presented for encashment.

12. In the instant case, the issuance of the blank cheques is not disputed by the petitioner. There is no dispute that the cheques belonged to the petitioner. When the cheque is signed, leaving blank all other



particulars, and handing over to the payee authorizing him to fill up the blanks as agreed upon, attracts penal provision of Section 138 in case of dishonor.

13. In the case of ***Bir Singh v. Mukesh Kumar : (2019) 4 SCC 197***, it was held that:

“37. 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.”

14. It is pertinent to take note of the decision of the Apex Court in ***Indus Airways Private Limited and Others v. Magnum Aviation Private Limited and Another*** (*supra*), on which learned counsel for the petitioner has placed firm reliance alleging that the cheque presented by the bank for the outstanding dues exceeded the actual liability which was due. In applying the aforesaid judgment, one cannot lose sight of the difference between a transaction of the cancelled purchase order and that of a loan transaction where the loan has been advanced, and its repayment becomes due. The issue before the Supreme Court was whether dishonour of post-dated cheques issued by the purchasers towards “advance payment” would be covered by Section 138 of the Act if the purchase order was subsequently cancelled. 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. It



was further held that, in a case where a post-dated cheque issued by way of advance payment against a purchase order was dishonoured, it cannot be considered as a cheque issued towards the discharge of legally enforceable debt. In the said case, it was admitted between the parties that the purchase order was cancelled. The Hon'ble Apex Court held that in such circumstances, the cheque could not be held to have been presented for encashment for discharge of legally enforceable debt or liability.

15. In so far as the assertion of the learned counsel for the petitioner with respect to the payment of the EMI amount is concerned, the same is required to be proved by way of documentary and oral evidence at the time of trial. It is also relevant to note, in the present case, that neither the petitioner has made nor placed on record any endorsement nor has filed any other documentary evidence to support her contentions, and the same remains to be disputed facts which will be adjudicated upon at the time of trial.

16. In the case of ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Another*** : (2023) 1 SCC 578, the Supreme Court held that:

“26. Section 138 of the Act stipulates that if the cheque is returned unpaid by the bank for the lack of funds, then the drawee shall be deemed to have committed an offence under Section 138 of the Act. However, the offence under Section 138 of the Act is attracted only when the conditions in the provisos have been fulfilled. Proviso (b) to Section 138 states that a notice demanding the payment of the “said amount of money” shall be made by the drawee of the cheque.

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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 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."

17. It is also equally settled that while exercising the powers under Section 482 of the CrPC at the instance of an accused, the High Court ought to be circumspect. It should not interfere unless some unimpeachable and uncontroverted evidence is placed on record to indicate that the allegations made are bereft of any merit. Thus, in a case where the basic averments have been made which point to the issuance of the cheque and its dishonour; in the absence of any unimpeachable and uncontrovertible evidence, the defences such as the existence of liability etc. are a matter of trial.

18. It has been held time and again that the power of quashing criminal proceedings while exercising power under Section 482 of the CrPC should be exercised very sparingly and with circumspection. The Court, at this stage, is not to embark upon an inquiry as to the reliability or genuineness of the allegations made in the complaint. The Court, at the same time, is also not to go into the merits of the complaint to reach a conclusion that there was any existing debt or liability. Furthermore, the burden of proving that there was no existing debt or liability is on



the accused which is required to be discharged at the time of trial unless some evidence of unimpeachable character is produced before the Court to take a different view. The presumption envisaged under Section 139 of the NI Act is a rebuttable presumption at the time of trial. The Court can exercise power under Section 482 of the CrPC, if the complaint on the face of it does not make out any case against the accused or if any evidence of an unimpeachable nature is produced to support the case of the accused. The only ground taken by the petitioner in the present case is that the cheque was given to the bank for the purpose of repayment of EMIs and not for the total outstanding amount.

19. The petitioner has not disputed that the cheque was issued by her towards the loan taken from Respondent No. 2 bank. Thus, the defense whether the cheque was given as a security or whether there was any outstanding liability or not, is a question of fact that will be determined after the recording of the evidence.

20. The Hon'ble Apex Court in the case of ***M.M.T.C Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another*** : (2002) 1 SCC 234 held as under:

“13. The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored the well-settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability.”



21. In the case of ***HMT Watches Limited v. M.A. Abida and Another*** : (2015) 11 SCC 776, the Hon'ble Apex Court held as under :

“10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplained with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

22. The Hon'ble Supreme Court in a recent decision of ***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan*** : 2022 SCC OnLine SC 1238, had held that the provisions contained in the NI Act create a statutory presumption of dishonesty, exposing a person to criminal liability if payment is not made within the statutory period even after issuance of notice. It further held that everything stated in the complaint is taken to be correct at the initial stages and the allegations made therein are to be liberally construed in favour of the complainant at the time of issuance of process. Once the basic averments which are sufficient to make out a case exist, the complaint cannot be quashed



unless the evidence of a sterling and incontrovertible nature is produced before a Court and the High Court is convinced that the prosecution is merely an arm twisting tactic and the continuance of the proceedings would be an abuse of the process of the Court.

23. The petitioner, in the present case, has not made out a case for this Court to interfere while exercising jurisdiction under Section 482 of the CrPC at this stage.

24. The present petition is, accordingly, dismissed.

25. Pending application is also disposed of.

AMIT MAHAJAN, J

JULY 3, 2023

SK / VG

