IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75556 of 2023

Arising Out of PS. Case No.-17 Year-2022 Thana- PATNA COMPLAINT CASE District-Patna

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1. Dr Gaya Nand Choupal Son Of Late Ishwar Dayal Das Resident Of 303a, Swablambi Residency, Daudbigha, Kankarbagh, P.S.- Agamkuan, District-Patna. At Present Residing At H.N.-34, Block-H, Sector-22, Gautam Buddha Nagar, Noida, State-U.P.
2. Daya Nand Prasad Dson Of Late Ishwar Dayal Das Resident Of Village/Mohalla- 103, Rai Shanti Plaza, Kanti Factory Road, Mahatma Gandhi Nagar, P.S.- Patrakar Nagar, District-Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Poonam Singh Wife Of Sri Raj Kumar Singh Resident Of Manikalaya, Mahatma Gandhi Nagar, Kankarbagh, P.S. Agamkuan, District-Patna

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Sanjeev Kumar
For the Opposite Party/s : Mr.Ram Priya Sharan Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 09-07-2024

Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the opposite party no. 02 Shri Prateek.

2. The prosecution story in brief is that the complainant namely Poonam Singh has alleged that she had given her house on rent to the petitioners for running their hospital in the name of "Chaupal Hospital Pvt. Ltd." through a

Lease agreement dated 01.04.2016. The agreement was executed between the complainant and Rachna Kumari Ray with consent of the Gaya Nand Chaupal and Daya Nanad Choupal. The rent of the house had been fixed Rs. 1,00,000/- per month. She also stated that prior to the agreement dated 01.04.2016 one agreement was executed in 2007 between her and Dr. Gayanand Chaupal on a monthly rent of Rs. 30,000/ per month for running a hospital namely Chaupal Hospital Pvt. Ltd. She further alleged that the petitioners and other accused persons did not pay the fixed rent regularly and the arrears of rent had reached to Rs. 30,16,224/- till August, 2021. Thereafter, the petitioners issued a bank cheque bearing cheque no. 962295 dated 27.09.2021 of SBI, Kankarbagh main road branch for Rs. 30,16,224/- in the name of "Chaupal Hospital Pvt. Ltd." to the complainant. The complainant presented the cheque for encashment but the same was dishonoured due to closure of account. The complainant informed the petitioners about the same and upon their assurance, the cheque was again presented for encashment on 19.11.2021 but the cheque was dishonoured again on the same ground and because of the dishonour of the cheque for the second time, the complainant has sent legal notice to the accused persons and filed the present complaint case and the Judicial Magistrate-I, Patna City after examining the materials available on record, has taken cognizance against the petitioners under section 417 of IPC and under section 138 of N.I. Act vide his order dated 23.08.2022 which gives rise of the present case.

3. It is submitted by the learned cousnel for the petitioners that the petitioners are innocent and the present case has been filed to extort money from them. He further submits that it is an admitted fact that as per the Lease agreement dated 01.04.2016, the lease agreement was executed between the complainant and Rachna Kumari Roy for running a hospital namely "Janki Memorial Hospital and Trauma Centre" on a rent of Rs. 35,000/- per month and Rs. 65,000/ per month as maintenance which comes to Rs. One Lakh per month and neither the Chaupal Hospital Pvt. Ltd. nor the petitioners are party in that agreement.

4. It has further been submitted that one lease agreement was earlier executed between the complainant and Gaya Nand Chaupal, the director of "Chaupal Hospital Pvt. Ltd." for running the Chaupal Hospital on 07.05.2007 for a period of eleven months and this agreement was extended time to time. The petitioners have opened and maintained one current bank account in the name of Chaupal Hospital Pvt. Ltd. bearing bank a/c no. 030237760800 in SBI, Kanakrbagh Main Road Branch, Patna. In 2014, the complainant and her husband Raj Kumar Singh demanded one blank cheque for the security purpose, though there was no dispute regarding the payment of the rent. On repeated request of the complainant and her husband, the petitioners have handed over a signed blank cheque undated (without any seal of the hospital) bearing cheque no. 962295 to the complainant and her husband.

5. It has further been submitted that in 2016, the petitioners were appointed in government job, so they decided to close the said hospital namely Chaupal Hospital Pvt. Ltd., but the sister-in-law of the petitioner no. 1 and her husband expressed their desire to run that Chaupal Hospital and after settlement of all claims/arrears of rent between the complainant and the petitioners, one new lease agreement was executed between the complainant and Rachna Kumari Roy on 01.04.2016 to run the hospital in the name and style of "Janki Memorial Hospital and Trauma Centre" in the building of the complainant on a monthly rent of Rs. 1,00,000/ per month and as the petitioners do not make any transaction in their current bank account, the same was closed for no business/transaction.

6. It has further been submitted that at the time of settlement between the complainant and the petitioners, the petitioners demanded the signed blank cheque no. 962295 from the complainant and her husband, but they said that they had lost that cheque and since the agreement with them do not exist any more, that cheque leaf became useless and they assured that if they will find that cheque they will destroy it. The petitioners, having faith on the complainant and her husband forgot that cheque.

7. It has further been submitted by the learned counsel for the petitioners that the cheque produced and presented by the complainant itself proved that it was an old cheque as the cheque was a normal cheque which was not in practice from 2015-16 and since CTS with Bar Code cheque was introduced and practiced by all banks in India, old cheques without CTS bar code became invalid and therefore, the allegation made by the complainant that the petitioners have handed over the cheque in question to the complainant is baseless and false.

8. It has further been submitted by the learned counsel for the petitioners that Rachna Kumari Roy has regularly paid the agreed rent to the complainant till she ran the hospital in the building of the complainant i.e. till August, 2021.

9. It has further been submitted by the learned counsel for the petitioners that when the dispute arose between the complainant and the directors of Janki Memorial Hospital and Trauma Centre, then being the family members, the petitioners intervened in the matter and asked the complainant and her husband to release the hospital properties, but the complainant and her husband completely denied to return the equipments, furniture and other items of the hospital and also threatened the petitioners that they have their signed blank cheque and asked the petitioner to pay Rs. 40, 00,000/- (Forty Lakh rupees) or they will lodge a false case against them by using their signed blank cheque and seeing the reasonable apprehension at the hands of the complainant, the wife of the petitioner no. 2 has filed one Informatory Petition before Ld. Chief Judicial Magistrate, Patna dated 24.09.2021 bearing Informatory Petition No. 3304/2021.

10. It has further been submitted that from the records available in the complaint petition as well as depositions and other documents, it is clear that the complainant intentionally committed forgery with petitioners by using their signed blank old cheque and thereafter the complainant along with her husband made plan to extort money from th petitioners by filing the false complaint case.

11. The cheque in question is an old cheque without any CTS Bar code and this type of cheque is not a legal Negotiable Instrument in India and also the bank a/c no. 030237760800 was the current a/c in the name of Chaupal Hospital Pvt. Ltd. and without seal of the hospital it is not a valid instrument and the Judicial Magistrate, First Class, Patna City, Patna has erred in taking cognizance under section 138 of N.I. Act and therefore the same may be quashed.

12. Learned counsel for the complainant has opposed this quashing application and has supported the statements made in the complaint.

13. Learned counsel for the complainant has relied upon the judgment of Himachal Pradesh High Court passed in the case of ***Prem lal Vs. State of Himachal Pradesh reported in 2024 SCC OnLine HP 295,*** the judgment of Delhi High Court passed in the case of ***Payal Malhotra Vs. Sulekh Chand reported in 2023 SCC OnLine Delhi 7597*** and the judgment of the Hon'ble Supreme Court passed in the case of ***Sripati Singh Vs. The State of Jharkhand and Anr. reported in 2021 SCC OnLine SC 1002*** and has submitted that even if it is accepted that the cheque in question was a security cheque then also the petitioners will be liable for the dishonour of the cheques.

14. Learned counsel for the complainant has submitted that the cognizance has been taken after examination of the complainant and on the statement of the witnesses. From the statement of the witnesses, it appears that the cheque in question bears the signature of both the petitioners which has been issued for payment of unpaid rent but the same has been dishonoured because of the closure of the account. Thereafter the petitioners were issued notice and upon no convincing reply for the same from the petitioners, the present case has been filed.

15. Learned counsel for the complainant has also relied upon Clause IV of a circular of the Reserve Bank of India dated 31.10.2022 and submits that non-CTS Cheques are valid as Negotiable Instrument.

15.1 The circular of the RBI dated 31.10.2022 reads as under:-

1. What is Cheque Truncation?

Truncation is the process of stopping the flow of the physical cheque issued by a drawer at some point by the presenting bank en-route to the paying bank branch. In its place an electronic image of the cheque is transmitted to the paying branch through the clearing house, along with relevant information like data on the MICR band, date of presentation, presenting bank, etc. Cheque truncation thus obviates the need to move the physical instruments *across bank branches, other than in exceptional circumstances for clearing purposes. This effectively eliminates the associated cost of movement of the physical cheques, reduces the time required for their collection and brings elegance to the entire activity of cheque processing.*

2. Briefly explain the entire process flow in Cheque Truncation System (CTS).

In CTS, the presenting bank (or its branch) captures the data (on the MICR band) and the images of a cheque using their Capture System (comprising of a scanner, core banking or other application) which is internal to them and meeting the specifications and standards prescribed for data and images under CTS.

To ensure security, safety and non-repudiation of data / images, end-to-end Public Key Infrastructure (PKI) has been implemented in CTS. As part of the requirement, the collecting bank (presenting bank) sends the data and captured images duly signed digitally and encrypted to the central processing location (Clearing House) for onward transmission to the paying bank (destination or drawee bank). For participating in the clearing process under CTS, the presenting and paying banks use either the Clearing House Interface (CHI) or Data Exchange Module (DEM) that enables them to connect and transmit data and images in a secure and safe manner to the Centralised Clearing House (CCH).

The Clearing House processes the data, arrives at the settlement, and routes the images and requisite data to the paying banks. This is called presentation clearing. The paying banks through their CHI / DEM receive the images and data from the CCH for further processing.

The paying bank's CHI / DEM also generates the return file for unpaid instruments, if any. The return file / data sent by the paying banks are processed by the Clearing House in the return clearing session in the same way as presentation clearing and return data is provided to the presenting banks for processing.

The clearing cycle is treated as complete once the presentation clearing and the associated return clearing sessions are successfully processed. The entire essence of CTS technology lies in the use of images of cheques (instead of the physical cheques) for payment processing.

3. What type of instruments can be presented for clearing through CTS? What is CTS-2010 Standard Cheque?

Only CTS-2010 standards compliant instruments can be presented for clearing through CTS.

CTS-2010 standards contain certain benchmarks towards achieving standardization of cheques issued by banks across the country. These include provision of mandatory *minimum-security features on cheque forms like quality of paper, watermark, bank's logo in invisible ink, void pantograph, etc., and standardisation of field placements on cheques. The minimum-security features and standardisation help presenting banks while scrutinising / recognising cheques of drawee banks in an image-based processing scenario.*

4. Are non-CTS cheques invalid?

Banks have been advised to issue only CTS 2010 standard compliant cheques from September 30, 2012. Earlier, there were separate clearing sessions for non-CTS cheques. However, they were discontinued with effect from December 31, 2018. As of now, non-CTS cheques cannot be presented in CTS. Bank have been advised to withdraw the non-CTS cheques from the customers. However, non-CTS cheques remain to be valid as a negotiable instrument.

5. What are the benefits of CTS to customers?

CTS enables fast and cheap realisation of funds to customers as compared to traditional mechanisms. Under grid-based CTS clearing, all cheques drawn on bank branches falling within in the grid jurisdiction are treated and cleared as local cheques. No outstation cheque collection charges to be levied if the collecting bank and the paying bank are located within the jurisdiction of the same CTS grid even though they are located in different cities.

CTS also benefits issuers of cheques. The Corporates if needed can be provided with images of cheques by their bankers for internal requirements, if any.

6. What is the status of CTS implementation in the country?

CTS has been implemented in New Delhi, Chennai, and Mumbai with effect from February 1, 2008, September 24, 2011, and April 27, 2013 respectively. After migration of the entire cheque volume to CTS, the traditional mechanisms of cheque clearing have been discontinued across the country. Further, banks have been advised to ensure that all branches are connected to CTS.

Under CTS, cheque processing locations in India are consolidated into the three grids in Chennai, Mumbai and New Delhi.

Each grid provides processing and clearing services to all the banks under its respective jurisdiction. Banks, branches, and customers based at small / remote locations falling under the jurisdiction of a grid would be benefitted, irrespective of whether there exists at present a formal arrangement for cheque clearing or otherwise. The illustrative jurisdiction of the three grids is indicated below:

●*<u>Chennai Grid</u>: Andhra Pradesh, Telangana, Karnataka, Kerala, Tamil Nādu, Odisha, West Bengal, Assam and the Union Territory of Puducherry.*
●*<u>Mumbai Grid</u>: Maharashtra, Goa, Gujarat, Madhya Pradesh and Chhattisgarh.*
●*<u>New Delhi Grid</u>: National Capital Region of New Delhi, Haryana, Punjab, Uttar Pradesh, Uttarakhand, Bihar, Jharkhand, Rajasthan and the Union Territory of Chandigarh.*

7. What is "One Nation, One Grid" project?

Under the One Nation, One Grid project, three CTS grids explained above are to be merged to create a single grid for the nation. Single grid shall benefit customers with faster realisation of outstation cheques. It shall also benefit banks with easier fund management, streamlining of infrastructure and overall efficiency improvements.

8. What care should be taken by customers while writing cheques?

There are three images of each cheque that are taken in CTS – front Gray Scale, front Black and White and back Black and White. Customers should use image friendly coloured ink to write cheques to facilitate clear image of written information. Further, customer should use permanent ink to prevent fraudulent alternation of contents later. However, Reserve Bank of India (RBI) has not prescribed specific ink colors to be used to writing cheques.

Customer should also be aware that cheques with alteration / modification are not accepted under CTS. No changes / corrections can 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 figures) or legal amount (amount in words), fresh cheque leaves should be used by customers. This would help banks in identifying and controlling fraudulent alterations.

9. What is Positive Pay System for Cheques?

Positive Pay System (PPS) for CTS is an additional indicator provided by NPCI to all banks to facilitate the clearing process and pre-empt cheque-related frauds and shall form part of prudent practices followed by banks for payment processing. It has been introduced to augment customer safety in cheque payments and reduce instances of fraud occurring on account of tampering of cheque leaves.

Banks have been advised to enable PPS facility for all account holders issuing cheques for amount of ₹ 50,000 and above. While availing of this facility is at the discretion of the account holder, banks may consider making it mandatory in case of cheques for amounts of ₹ 5,00,000 and above.

10. What are the precautions required to be taken by

the banks in CTS?

Banks should exercise care while affixing stamps on the cheque forms, so that it does not interfere with the material portions such as date, payee's name, amount, and signature. The use of rubber stamps, etc., should not overshadow the clear appearance of these basic features in image. It is necessary to ensure that all essential elements of a cheque are captured in an image during the scanning process and banks / customers have to exercise appropriate care in this regard.

Banks are also required to verify the security features additional to CTS-2010 standard that have been voluntarily implemented

11. If a customer desires to see the physical cheque issued by him for any reason, what are the options available?

Under CTS the physical cheques are retained at the presenting bank and do not move to the paying banks. In case a customer desires, banks can provide images of cheques duly certified/authenticated. In case, however, a customer desires to see / get the physical cheque, it would need to be sourced from the presenting bank, for which a request has to be made to his / her bank. An element of cost / charge may also be involved for the purpose. To meet legal requirements, the presenting banks which truncates the cheques need to preserve the physical instruments for a period of 10 years.

These FAQs are issued by the Reserve Bank of India for information and general guidance purposes only. The Bank will not be held responsible for actions taken and/or decisions made based on the same. For clarifications or interpretations, if any, one may be guided by the relevant circulars and notifications issued from time to time by the Bank.

16. Paragraph 19 of the Judgment of the ***Himachal Pradesh High Court*** passed in the case of ***Prem Lal Vs. State of Himachal Pradesh (Supra)*** reads as under:-

"*Hence, the plea that the complaint is based on an invalid cheque, which could not have been presented is not acceptable because the cheque was not dishonoured on the ground that it was a non-CTS cheque and could not have been honoured in violation of the guidelines of the Reserve Bank of India. It was dishonoured with the endorsement 'funds insufficient' as* *per Para 3 of the complaint. Therefore, the complaint cannot be quashed at this stage."*

17. Paragraph 14 of the Judgment of the Delhi High Court passed in the case of ***Payal Malhotra Vs. Sulekh Chand (Supra)*** reads as under***:-***

"*Moreover, it is further contended by the Counsel for the petitioner that the cheque in question has been misused by the respondent as the same was not returned by the respondent to the petitioner even after newspaper publication dated 23.06.2022 and Legal Notices dated 13.08.2022 and 22.08.2022 regarding the closure of bank account of M/s Hindustan A.D.V Axle Company in IDBI Bank as well as PNB Bank in June 2021 itself. In my considered opinion, the same does not cut much ice as the Hon'ble Supreme Court has time and again observed that the provisions contained in Section 138 of the NI Act are to be interpreted in a liberal manner so as to achieve the object for which the said provision has been enacted, and not only the cases of dishonour of cheques on account of insufficient funds or exceeding of arrangement but the cases involving dishonour of cheques on accounts of "payment stopped" and "account closed" have also been brought within the ambit of offence under the aforesaid provision. Reliance can also be placed upon the judgment of the Hon'ble Supreme Court in NEPC Micon Limited and Others vs. Magma Leasing Limited [(1999) 4 SCC 253]."*

18. Paragraph 16 of the judgment of the the Hon'ble Supreme Court passed in the case of ***Sripati Singh Vs. The State of Jharkhand and Anr. (Supra)*** reads as under:-

"*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 apledge 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.*"

19. I have considered the submission of the parties. The contention of the petitioners is that after getting government job, the petitioners left the premises of the complainant and the complainant entered into a new agreement with sister-in-law of petitioner no. 01 who became the tenant of the complainant. The cheque issued by the petitioners was a non-CTS cheque and the account was closed by them as they have no liability for payment of rent and they alleged the misuse of cheque by the complainant.

20. From the Judgments discussed above, it is clear that the cheque which has been issued by the petitioner has been dishonoured because of closure of the account and it invites the offence under Section 138 of the Negotiable Instruments Act. A cheque alleged to have been issued for the purpose of security, upon its dishonour, will also invite the offence under Section 138 of the Negotiable Instruments Act. So far as the presentation of a non-CTS cheque is concerned, in the present case the same has been dishonoured because of closure of the account and not on the ground of it being a non-CTS cheque and therefore the arguments raised by the learned counsel for the petitioners have no merit.

21. Accordingly this application is dismissed.

22. The Court below is directed to proceed further and conclude the case at the earliest.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	NAFR
CAV DATE	NA
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