

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1450 of 2022

With

CRAN 6 of 2023

Suresh Chandra Khemka & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Ayan Bhattacharya,
Mr. Neelesh Choudhury,
Ms. Anuradha Poddar.

For the State : Mr. Arijit Ganguly,
Mr. Bitasok Banerjee.

For the Opposite Party No. 2 : Ms. Priyanka Agarwal.

Hearing concluded on : 15.01.2024

Judgment on : 07.03.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding of C.S. No. 53426 of 2019, under Sections 138/141 of the Negotiable Instruments Act, 1881 pending before the Court of the Learned Metropolitan Magistrate, 11th Court at Calcutta.
2. The petitioners state that they are the office bearers of M/s, Gurudayal Gangabux (Pvt.) Ltd. having its Registered Office at-“Jute House” 12, India Exchange Place, Kolkata – 700 001 (hereinafter referred to as “M/s Gurudayal Gangabux”) which deals in export & import and the said M/s Gurudayal Gangabux are doing such business for a considerable period of time with great goodwill and reputation.
3. For the purpose of smooth running of the aforesaid business, M/s Gurudayal Gangabux used to obtain financial assistance from various banks and other financial institutions.
4. In the year of 2016, the petitioners being aware of the name of the opposite party no. 2 being a company who used to provide financial assistance to individuals and companies, approached the opposite party no. 2 for a loan and/or financial accommodation to the tune of Rs. 50 Lakh.
5. After proper verification and inspection done by the opposite party no. 2 agreed to provide and/or disbursed a loan to the tune of Rs. 50 Lakh and accordingly on March 21, 2016 the said amount was remitted through

RTGS/NEFT in favour of M/s Gurudayal Gangabux. It was further agreed that the entire money will be paid within March 2017, if not extended further.

6. But subsequently the petitioners decided to foreclose the loan, which was obtained from the opposite party no.2 by paying the residue amount, which was supposed to be paid within March 2017 and to discharge the liability to pay, the petitioners called upon the opposite party no. 2 and expressed their willingness to pay off the residue amount.
7. The petitioners state that on July 15, 2019, the opposite party no.2 herein filed a complaint before the learned CMM against the petitioners herein including the other accused persons, being CS No. 32544 of 2019, alleging commission of offences punishable under Sections 406/409/420/120B of IPC quashing of which has also been prayed for in CRR 3637 of 2019 which is being heard with the present revision as the dispute arises out of the same transaction.
8. The allegation as made in the petition of complaint includes that on receiving summons on 28.08.2019, in C.S. 32544/2019, the accused No. 3 approached the representative of the complainant company in the court premises and agreed to settle the matter and assured that the cheque for the said amount shall be sent shortly, so that the matter is resolved.
9. Ultimately in compliance to the assurance of the accused person and in discharge of their aforesaid existing legal, financial, enforceable principle

liabilities, and/or to liquidate the same in part they issued and sent One A/c. payee cheque bearing No. 510577 dated 01.08.19 for Rs. 50,00,000/- drawn on Kotak Mahindra Bank, Brabourne Road, Kolkata, **from the bank A/c of accused No. 1**, duly signed by accused No. 3 favouring the complainant company.

10. The complainant company presented the said cheque bearing No. 510577 dated 01.08.19 for Rs. 50,00,000/- drawn on Kotak Mahindra Bank, Brabourne Road, Kolkata for encashment within its validity period to its banker **HDFC Bank Ltd., Park Street, Kolkata,** but the said cheque was returned unpaid being dishonoured with the remark **“Alteration in Date”** vide its return memo/debit advice dated 16.09.2019, and intimation of the same was received by the complainant company subsequently from its banker.
11. The further allegation of the complainant is that from the said remark it is crystal clear that the accused persons had not arranged sufficient funds in their said bank account to cause honour of the said cheque and to defraud the complainant company, issued such cheque. The complainant company then requested the accused persons either to counter sign the said cheque or to issue a fresh cheque, but they did not comply.
12. The complainant company then sent a legal demand notice dated 25.09.19 through their Advocate as contemplated under the provisions of Section 138(b) of the N.I. Act, as amended upto date, under registered

post with A/d. on 27.09.2019 to all the accused persons at their correct addresses with pre paid postage, and the notice was served upon the accused persons at their office address on 30.09.19 duly acknowledged (A/d. cards). It is also clear from the track report of the India Post. But, in spite of all efforts the accused persons failed and neglected to make any payment within the stipulated period as prescribed in the notice and/or till date, but gave vague reply denying the material facts and liabilities.

13. The opposite party's case is that from the above facts and circumstances it is crystal clear that the accused persons issued the said cheque in discharge of their partial liabilities knowing well that they had no funds in their bank account to cause honour of the said cheque and in spite of due notice they failed and neglected to make any payment within the statutory period and/or till date, as such committed offence punishable under the provisions of Section 138 read with 141 of the Negotiable Instrument Act, as amended upto date, and for which they are liable to be prosecuted accordingly.
14. **It prima facie appears,** on perusal of the copy of the cheque that the date being 01.08.2017(seven) has been tampered and made 01.08.2019(nine) and the bank return memo has noted, the reason for return is **"Alteration in date". Drawer confirmation required.**
15. Copy of the original cheque has been enclosed being Annexure P-8 at Page 42, which shows that the cheque in question was dated 01.08.2017.

16. Annexure P-9 is a letter dated 27.11.2017 issued by the petitioners company to the Manager of the concerned Bank requesting to close the said account with immediate effect.

17. Written Argument along with a rejoinder thereto has been filed by the petitioner relying upon the following judgments:-

It is stated by the petitioner that:-

1) Dishonour on the ground of “alteration in date” does not constitute an offence under Section 138 of NI Act. Any material alteration of a cheque renders the cheque void ab initio. Therefore, the cheque does not remain a valid instrument. In this regard, the provision under Section 87 of NI Act has been relied upon. **Section 87 of NI Act envisages any material alteration of a cheque renders the cheque void.** The aforesaid enactment is extracted hereinbelow:-

“87. Effect of material alteration.- Any material alteration of a negotiable instrument renders the same void as against anyone 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. ”

18. It is stated by the petitioner that from the copy of the cheque along with the Return Memo of the bank, it would be evident that the date in the cheque in question was materially altered by the opposite party no. 2 without the consent/information/knowledge of the petitioners and/or co-

accused persons. Therefore, the said cheque in question, becomes void in terms of the aforesaid enactment. Therefore, no proceeding under Section 138 of the NI Act could have been initiated on the basis of the said cheque. The presentment of the said PDC and the initiation of the present proceeding is therefore in, is hit by the provision under Section 87 of the NI Act.

19. Cases referred to, in support of the petitioners argument are:-

1.	2023 SCC OnLine Cal	HTC India Pvt. Ltd. & Ors. v. Link Telecom Pvt. Ltd.	Entire
2.	(2023) 3 SCC 423	Deepak Gaba & Ors. V. State of Uttar Pradesh & Anr.	Para 18/19/20
3.	(2019) 16 SCC 739	Prof. R.K. Vijayasathathy & Anr. v. Sudha Seetharam & Anr.	Para 15/16/17/18 /19/20/23/2 8
4.	(2019) 9 SCC 148	Satishchandra Ratanlal Shah v. State of Gujarat & Anr.	Para 13/14
5.	(2008) 1 C Cr LR (Cal) 789	Kingshuk Neogi v. The State of West Bengal & Anr.	Para 3/10/12/13
6.	(2005) 10 SCC 261	Hotline Teletubes and Components Ltd. & Ors. v. State of Bihar & Anr.	Entire
7.	(2001) 3 SCC 513	Alpic Finance Ltd. v. P. Sadasivan & Anr.	Para 10

8.	(2000) 2 SCC 636	G. Sagar Suri & Anr. v. State of U.P. & Ors.	At Page 96.
9.	(2005) 1 SCC 122	Zandu Pharmaceuticals Works Ltd. & Ors. vs Mohd. Sharaful Haque & Anr.	Para 13
10.	1992 Cri. L.J. 1448 (Cal)	A.K. Khosla & Ors. vs. T.S. Venkatesan & Anr.	Para 52/53/54
11.	AIR 1992 SC 604	State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.	Para 108
12.	2001(3) R.C.R. (Criminal) 331	T. Kalavathy vs. Veera Exports	Para 14/15/16/17 /18/19
13.	1989 L.W. (Crl) 552	Kanthirathinam vs Sajjadi Begum	Para 9
14.	2012(2)AIR Jhar R 12	M/s Goyal Enterprises vs. State of Jharkhand & Anr.	Para 11/12/13
15.	2023 SCC OnLine Bom 98	Ruksana v. Kamalbai	Para 8/10
16.	AIRONLINE 2022 BOM 624	Pinak Bharat & Company vs. Anil Ramrao Naik	Para 27/28/29/31 /32
17.	2006 CRI. L.J. 3140	M/s Shreyas Agro Services Pvt. Ltd. vs. Chandrakumar S.B.	Para 5
18.	2018 ACD 161 (MAD)	P. Jayamadha vs. L. Kumar	Para 20/21/22

20. In support of their Argument as to compliance of Section 141 of the N.I. Act, the petitioners have relied upon the following cases:-

(a)	2023 SCC OnLine Cal 2618	Rahul Tantia vs. The State of West Bengal & Anr.	Entire
(b)	(2023) 8 SCC 473	Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Anr.	Para 21/22/23/24 /25
(c)	2023 (13) SCALE 573	Siby Thomas vs. M/s. Somany Ceramics Ltd.	Para 12/14/15/16 /17
(d)	(2002) 1 SCC 97	Veera Exports v. T. Kalavathy.	-
(e)	(2002) 3 SCC 89	State of Karnataka vs. M. Devendrappa & Anr.	(Para 6)
(f)	(2005) 8 SCC 89	S.M.S. Pharmaceutimcals Ltd. vs. Nita Bhalla & Anr.	(Para 18)

21. The opposite party no. 2 has relied upon the following rulings:-

- i. *Veera Exports v. T. Kalavathy, (2002) 1 SCC 97, (Para 7, 8, 9 & 10).*
- ii. *Rajeshbhai Muljibhai Patel and Ors. Etc. v. State of Gujarat and Anr., (2020) 2 S.C.R. 687, (Para 20 & 21).*
- iii. *Bir Singh v. Mukesh Kumar, (2019) 2 S.C.R. 24, (Para 37 to 40, 40 to 44).*
- iv. *Arpan Jain & Anr. v. State & Anr., (2021) CRL. M.C. 1976/2021 & CRL. M.A. 13371/2021, (Para 6 to 9).*

22. The cheque in this case has been issued on behalf of the company, and the company is the accused no. 1 in the complaint case before the trial court.

23. Section 138 of the N.I. Act, lays down:-

“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.”

24. In **Vinod Tanna & Anr. vs Zaheer Siddiqui & Ors., (2002) 7 SCC**

541, 17 September, 2001, the Supreme Court held:-

*“5. Mr. Bobde, learned Senior Counsel appearing for the appellants, contends that the High Court has failed to appreciate the ratio of the judgment of this Court in Modi Cements case (supra) inasmuch as in paragraph 11 of the said judgment, the Court had recorded a conclusion that it is in complete agreement with the legal proposition enunciated in Electronics Trade and Technology Development Corpn. Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd. (1996-2) 113 P.L.R. 332 (S.C.), as well as K.K. Sidharthan v. T.P. Praveena Chandran, (1997-1)115 P.L.R. 233 (S.C.)fs. In these two cases, the cheque in question had been dishonoured because of insufficiency of funds or the amount exceeded the arrangement made with the Bank and in Electronics Trade and Technology Development Corpn. Ltd (supra), the cheque had not been honoured because of the direction from the drawer regarding stop payment. **In fact, a plain reading of Section 138 of the Act makes it crystal clear that unless the conditions precedent mentioned therein are satisfied, the said penal provision cannot be attracted.** In this view of the matter and on the admitted facts, as referred to in paragraph 5 of the impugned judgment, we have no hesitation in coming to the conclusion that the High Court committed error in relying upon the judgment of this Court in Modi Cements (supra) and refusing to quash the criminal proceeding. We, accordingly, set aside the impugned judgment of the High Court, quash the criminal proceeding and allow the criminal appeal.”*

25. The petitioner has relied upon the judgment in **Veera Exports vs T.**

Kalavathy, (2002) 1 SCC 97, decided on November 2, 2001, wherein

the Supreme Court held:-

“9. The High Court has also placed reliance on Section 87 of the Negotiable Instruments Act, which reads as follows:

“87. Effect of material alteration.—Any material alteration of a negotiable instrument renders the same void as against anyone 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.”

*The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. **It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed.***

10. It is held by the High Court that a change of date is a material alteration which affected the interests of the respondent. It is held that the respondent not being a willing party to the said alteration, the cheques were void as contemplated by Section 87 of the Negotiable Instruments Act. At this stage there is no basis for arriving at such a conclusion. In the earlier part of the impugned judgment it has been correctly held that this is a question of fact. This is a fact which will have to be established on evidence during trial. At this stage the High Court could not have quashed the complaint merely on the basis of an assertion in the reply.”

26. Accordingly, in view of the judgment in ***Veera Exports vs T. Kalavathy (Supra)***, the proceedings in the present case should be permitted to proceed towards trial.
27. **CRR 1450 of 2022 is thus dismissed.**
28. The trial court shall proceed in accordance with law with the trial keeping with the provision of N.I. Act including Section 87 N.I. Act and make an endeavour to dispose of the case expeditiously.
29. All connected applications, if any, including **CRAN 6 of 2023** stand disposed of.
30. Interim order, if any, stands vacated.
31. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
32. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)