IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5776 OF 2018

Man Mohan Agarwal ...Petitioner
Versus
Panasonic Life Solutions India Private Limited & Anr. ...Respondents

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Mr. Vivek Gupta, Advocate for the Petitioner.

Mr. Sandeep Karnik a/w Ms. Yasmin F. Godrej, i/by Mr. Crawford Bayley & Co. for Respondent No.1.

Mr. Arfan Sait, APP for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 19th JANUARY, 2024.

P.C.:

1. The Petitioner challenges the order issuing process and proceedings in Criminal Complaint No.10936/SS/2015 filed by the Respondent No.1 under Section 138 of the Negotiable Instruments Act.

2. The brief facts of the complaint are as follows :

i) The accused is a dealer of complainant's electrical products. The complainant had appointed the accused. The accused purchased various electrical goods from complainant. In respect of these purchases, the complainant raised various invoices upon the accused from time to time.

ii) On 18th August 2014 a sum of Rs.1.55 Crores was outstanding and due and payable by accused to the complainant. This was confirmed, acknowledged and and admitted by the accused, through his son, as authorised signatory who issued letter dated 18th August 2014, whereby the complainant was assured of the repayment of Rs.1.55 Crores in the manner/Schedule set out therein.

iii) The accused issued a balance confirmation letter dated 31st December 2014 signifying and confirming that a sum of Rs.1,62,55,498.10/- was outstanding and due and payable by the accused to the complainant.

iv) The accused forwarded an E-mail dated 6th January 2015 and acknowledged his liability towards the complainant by proposing to make payment of around Rs.50 Lakhs in January 2015, Rs.50 to 60 Lakhs in February 2015 and amount around of Rs.50 to 60 Lakhs in March 2015.

v) In order to discharge payment of outstanding towards complainant, the accused issued cheques in favour of the complainant. The accused authorised the complainant to fill in the amount and dates in the said cheques.

vi) With a view to create false record, the accused issued letter dated 16th April 2015 and called upon the complainant to settle the account between them and alleged that the blank cheques were issued as and by way of security.

vii) By letter dated 8th May, 2015 the complainant denied the contentions taken up in the letter dated 16th April 2015 and asserted that as on 30th April 2015 the accused was liable to pay to the complainant a sum of Rs.1,03,11,617.88/- together with interest at the rate of 24% per annum.

viii) By letter dated 23rd May, 2015, the accused responded to complainant's letter and falsely contended that the complainant was liable to pay the accused certain sums. Meeting was held on 05.06.2015 wherein, the accused agreed to pay the outstanding sums to the complainant in installments. Accused offered to furnish PDC's to the complainant. The accused remitted 50 Lakhs by RTGS to the complainant on 05.06.2015. Vide letter dated 19.06.2015 the accused falsely recorded that he was liable to pay to the complainant a sum of Rs.32,10,000/- only which he proposed to pay by R.T.G.S. Several false claims were made by the accused which is evident from the correspondence exchange between the parties. The complainant entered sum of Rs.62,48,000/- on cheque bearing No.266665 dated 7th October 2015 and deposited the same with bank. The cheque was dishonoured with remarks 'payment stopped by the drawer' vide Memo dated 8th October 2015.

ix) Demand notice was issued to the accused on 28.10.2015. The accused by letter dated 09.11.2015 took false stand. Complaint was filed before the competent Court. Process was issued for offence under Section 138 of the Negotiable Instrument Act.

3. Learned Advocate for the Petitioner submitted that the complaint does not stipulate legally enforceable liability in respect to dishonoured cheque. The demand notice issued by the complainant was vague. The complainant has not specified as to how the disputed cheque came into their possession. The cheques were blank. Cheques were given as Security. The cheques were misused by complainant. Series of letters were addressed by the Petitioner and received by complainant wherein it will be clear that the cheques were indeed security cheques. The complainant had sought post dated cheques. The Petitioner paid an amount of Rs.50 Lakhs by RTGS on 05.06.2014 towards settlement of account. The

complainant had filled up the cheque and deposited it without specifying any liability in respect to which the cheque was dishonoured. The complaint is silent about ledger account. The complaint discloses that several blank cheques were handed over to the complainant. There is no reference to the disputed cheque. There is no evidence to establish that the cheque was issued in respect to any legally enforceable liability. The correspondence exchanged with the complainant indicate that the accounts were not settled and there was no liability in respect to the cheque. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr.** delivered in Criminal Appeal No.1497 of 2022.

4. Per contra, learned Advocate Mr. Karnik appearing for Respondent No.1 submitted that the complaint makes out a case for issuance of process. The safeguards requisite for initiating proceedings under Section 138 of the Negotiable Instruments Act were complied. Cheque was signed by the accused. Signature on the cheque is not disputed. Cheque was dishonoured for insufficient funds. It was issued in respect to the liability. The contention of the accused was that the cheques were issued by way

of security and all other grounds raised by the Petitioner are required to be urged during the trial. At this stage what is required to be seen is whether prima facie case was made for issuance of process. Whether there was legally enforceable liability in respect to the cheques is a question which has to be determined during the trial. The trial has already commenced. Examination-in-chief of the complainant is recorded. The matter is now due for recording the statement of the accused under Section 313 of Cr.P.C..

5. Mr. Karnik had relied upon the following decisions:

i) **M.M.T.C. Ltd. And Anr. V.s Medical Chemicals and Pharma (P) Ltd. & Anr**[1].

ii) **State Farm Corporation of India Ltd. V.s Nijjer Agro Foods Ltd. & Anr**[2].

iii) **Pulsive Technologies Private Limited Vs. State of Gujarat and Ors**[3].

iv) **HMT Watches Limited Vs. M.A. Abida & Anr**[4].

v) **Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) & Anr**[5].

vi) **Sampelly Stayanarayana Rao Vs. Indian Renewable Energy Development Agency Limited**[6].

1 (2002) 1 SCC 234
2 (2005) 12 SCC 502
3 (2014) 13 SCC 18
4 (2015) 11 SCC 776
5 2022 SCC Online SC 513
6 (2016) 10 SCC 458

6. On perusal of the complaint and the other documents on record it is apparent that the cheque was signed by the accused. It was dishonoured on account of ‘payment stopped by the drawer'. The grounds urged by the Petitioner that the cheque was not issued in respect to legally enforceable liability; there was misuse of the cheque by the complainant; or cheque was issued as security are to be established during trial. The submissions are based on disputed questions of fact which cannot be gone into at this stage. Hence, the contentions of the Petitioner cannot be accepted.

7. In the case of **Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr. (supra)** the issue was whether the offence under Section 138 of the Act would deemed to be committed if the cheque that is dishonoured does not represent the enforceable debt at the time of encashment. The accused was tried. Trial Court acquitted the accused on the ground that the accused paid the appellant sum of Rs.4,09,315/- partly discharging his liability in respect of debt of 20 Lakhs. The High Court confirmed the finding of trial Court that part of debt owed by accused was discharged and thus notice of demand issued under Section 138 of the Act would still be attracted when the drawer of the cheque makes a part payment towards debt or liability after the

cheque is drawn but before the cheque is encashed for the dishonour of cheque which represents the full sum. It was observed that, when a part-payment is made after the issuance of a post dated cheque, the legally enforceable debt at the time of encashment is less than the sum represented in the cheque. When a cheque is issued for security, between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode within due date that the cheque would mature for presentation. If the loan has been discharged before the due date or if there is an altered situation, then the cheque shall not be presented for encashment. Though a post dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been material charge in the circumstance such that the sum in the cheque does not represent a legally enforceable debt at the time of encashment, then the offence under Section 138 is not made out. The Hon'ble Supreme Court than dealt with issue relating to demand of amount notice. Reference was made to decision in the case of **Suman Sethi Vs. Ajay K. Churiwal,**[7]. It was held that demand has to be made for

7 (2000) 2 SCC 38

'said amount' which is the cheque amount. This decision cannot be applicable to the facts of the present case. Trial is yet to be conducted. Liability will have to be proved. The accused had acknowledged liability.

8. In the case of **Bir Singh Vs. Mukesh Kumar**, the Hon'ble Supreme Court in Paragraph 37 & 38 has observed as under :

> " 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.
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> 38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

9. In the case of **M.M.T.C. Ltd. And Anr. V.s Medical Chemicals and Pharma (P) Ltd. & Anr (Supra)** it is held that the power of quashing criminal proceedings should be exercised very stringently and 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. There is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This, they have to discharge in the trial. At this stage merely on the basis of averments in the Petitions filed by them the High Court could not have concluded that there was no existing debt or liability.

10. In the case of **Pulsive Technologies Private Limited Vs. State of Gujarat and Ors. (supra)** it is held that on factual issue, as to whether the complainant had discharged its obligations or not, the High Court could not have given its final verdict at this stage. It is matter of evidence. Whether any money is paid by the accused to the complainant is a matter of evidence. The accused has ample opportunity to probabilis his defence.

11. In the case of **HMT Watches Limited Vs. M.A. Abida & Anr. (supra)** it is held that the High Court has enormous power under Section 482 but such power needs to be exercised cautiously. Defence of the accused cannot be considered for exercise of inherent powers. It is impermissible to exercise inherent powers on disputed question of fact whether the cheques were given as

security or not, or whether there was outstanding liability or not is a question of fact. This question determined only by the trial court after recording of evidence.

12. In the case of **Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) & Anr**. (supra) the Hon'ble Supreme Court has observed that the legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint.

13. In the case of **Sampelly Stayanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (supra)** the accused had issued post-dated cheques as security for payment of loan installments. When such cheques were presented they were dishonoured. The complaint was filed under Section 138 of the Negotiable Instruments Act, 1881. The accused approached the High Court to quash the proceedings. The High Court declined to interfere. The apex Court held that whether cheque was given as security or there existed outstanding liability or not is a question of fact. Under such conditions, High Court cannot entertain disputed

question of fact under Section 482 of Cr.P.C. The High Court needs to exercise power under Section 482 of Cr.P.C. with great deal of caution. Defence of accused cannot be looked into at this stage. Post dated cheque a well-recognized mode of payment and presumption of legally enforceable debt or liability in favour of holder of cheque. Issuance of cheque and admission of signature thereon would invoke presumption of legally enforceable debt. The accused needs to rebut such presumption.

14. Considering the factual aspects of this matter and the legal principles enunciated in various judicial precedents, the grounds urged by the Petitioner cannot be accepted as it would be entered into arena of disputed questions of fact which is impermissible. The Court cannot exercise inherent powers to quash such proceedings.

ORDER

Criminal Writ Petition No.5776 of 2018 is rejected and stands disposed of.

(PRAKASH D. NAIK, J.)