IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :01.10.2024

Pronounced on :15.10.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.9044 of 2024 &
Crl.M.P.Nos.6406 & 6407 of 2024

1.M/s Manpuria Agro Products Private Limited,
Represented by Director and Authorised Signatory,
Mr.Varun Manpuria,
25, Maharishi Debendra Road,
Kolkata-700 007. .. Petitioner/Accused 1

2.Mr.Varun Manpuria
Director and Authorised Signatory,
M/s Manpuria Agro Products Private Limited,
202, Sarat Chatterjee Road,
Barat Colony, Lake Town,
North 24 Parganas. .. Petitioner/Accused 2

/versus/

M/s Kotak Mahindra Bank Limited,
Having branch office at
Samson Towers, 4th Floor,
No.402 & 403, Pantheon Road,
Egmore, Chennai 600 008,
Represented by its Chief Manager,
Mr.A.Senthilkumar .. Respondent/Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to quash the complaint in C.C.No.1196/2020 on the file of Fast Track IV Metropolitan Magistrate at George Town, Chennai.

For Petitioners :Mr.Aravind Subramanian
Senior Counsel for
Mr.Mohamed Ashik

For Respondent :Mr.E.K.Kumaresan

O R D E R

This criminal original petition is filed under Section 482 of Cr.P.C. to quash the complaint initiated under Section 138 of Negotiable Instruments Act, 1881, pending on the file of the Fast Track IV Metropolitan Magistrate at George Town, Chennai. The petitioners herein are the Company from whose account the cheque was drawn and its Director, who is the signatory of the cheque.

2. The crux of the complaint:

M/s Manpuria Agro Products Pvt. Ltd (the first petitioner- A-1) through its Directors (A-2 to A-4) availed various credit facilities aggregating to Rs.4,50,00,000/- (Rupees Four Crores Fifty Lakhs only) from the Kotak Mahindra Bank Limited during the month of August 2016. For the loan of first petitioner Company, its Directors and others offered personal guarantee and agreed to repay the loan as per the schedule of payment along with interest and other charges.

3. There was default in repayment despite several remainders from the complainant Bank. To discharge the debt, the borrowing company through its directors issued a cheque dated 08/11/2019 drawn from the account maintained by the borrower company and signed by one of its director as its Authorised signatory (the first and second petitioners herein) for a sum of Rs 1,72,85,072-33/-. At the time of issuing the cheque, the accused persons assured that the cheque will be honoured on its

presentation. However on presentation for collection, the cheque was returned unpaid and dishonoured on 26/11/2019 with remarks " Account Freezed". There was no sufficient fund in that account and knowingly to cheat the complainant, the petitioner had issued the cheque.

4. Since the cheque being issued to discharge a legally enforceable debt, but without fund and knowing well that the account is freezed, the company and its Directors are liable for prosecution under Section 138 of Negotiable Instruments Act, 1881. Hence, after issuing the statutory notice, the complaint filed against these petitioners and 2 others. The complaint was taken cognizance by the Learned Fast Track IV Metropolitan Magistrate, Chennai in C.C.No.1196/2020 and pending.

5. Crux of the petition to quash the complaint:

The complainant Bank sanctioned loan to the first petitioner company as per its sanction letter dated 01/10/2015. The first petitioner and its Directors on 15/10/2015, for availing credit facilities from the complainant bank gave two undated signed cheques bearing Number 000010 and 000011 as security. The complainant Bank without intimation to the petitioners and without authorization had freezed the Account of the petitioners on 04/06/2016. This was objected by the petitioners as unreasonable and unwarranted since it caused huge business loss to the first petitioner company as well as other LLP's run by its directors. Under these circumstances, on 22/08/2016 the Complainant Bank unilaterally came forward to sanction fresh cash credit facility of Rs.3,00,00,000/- (Rupees Three Crores only) on certain terms which were not accepted and there was no disbursement of funds consequent to the proposal letter 22/08/2016. In spite of request to defreeze the account, the complainant bank refused to defreeze and justified its arbitrary action as a precautionary measure to safeguard its interest.

6. The cheque which is the subject matter of the criminal complaint was entrusted to the complainant Bank on 15/10/2015 as security. The bank officials have filled the date as 08/11/2019 and presented for collection.

Naturally it was returned with endorsement account freezed. The complaint is constructed by the Bank to prosecute the petitioners maliciously and to tarnish its reputation.

7. Certain other allegations regarding recovery of the loan amount from the Fixed Deposit of its directors without authorization, ignoring the reply to the statutory notice, the quash of the complaint against the other two Directors by the High Court are some of the grounds raised in support of this quash petition.

8. Oral submissions:

The Learned Senior Counsel for the petitioners highlighting the facts that there was no disbursement of loan on 22/08/2016 as per the sanction letter. The cheque was not given for discharge of any enforceable debt but only as security. The cheque was dishonoured only because the complainant bank freezed the account. The bank who is the complainant cannot after freezing the account present the cheque given to it and initiated criminal prosecution. It being a clear abuse of process of law and malicious prosecution, same has to be quashed.

9. Per contra, the Learned Counsel for the respondent/complainant Bank submitted that the books of account reflects that as on 20/01/2020 , the due payable by the petitioner company is Rs 1,86,47,330.47. The subject cheque dated 08/11/2019, bearing No:000035 for Rs.1,72,85,072.33. The cheques alleged to have been given as security in the year 2015 has no relevance to the subject cheque. The freezing of the account will not exonerate the petitioner company from paying the cheque amount. Soon after it is brought to their knowledge through the statutory notice that the cheque given by them been dishonoured, they petitioners (drawer) ought to have paid to the complainant (payee/drawee) the cheque amount within 15 days from the receipt of the notice. In this case, the petitioners failed to pay the cheque amount despite put to notice. Therefore, Section 138 of Negotiable Instruments Act, attracts.

10. Heard the arguments of the Learned Senior Counsels for the petitioners and the Learned Counsel for the respondent. Records perused.

11. The point for consideration in this petition for quash is:

(i)Whether in view of the admitted fact that the account from which the cheque drawn was frozen and for that reason the subject cheque returned unpaid, will attract offence under Section 138 of NI Act ?

(ii)The complainant is the Bank which freezed the account due to the default of loan by the account holder. While so, whether the presentation of the cheque for collection and consequential complaint amounts to malicious prosecution ?

12. Reading of Section 138 of Negotiable Instruments Act, 1881, apparently say that dishonour of a cheque would constitute an offence only in one of the two contingencies envisaged. That is, the amount of money standing in the account must be insufficient to honour the cheque or it

exceeds the amount arranged to be paid. For the sake of convenient the relevant portion of the section is extracted below:-

> "***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 provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:"

13. It is true that in terms of Section 138 of the Act, the complaint for dishonour of cheque can be filed against the accused when the amount lying in the account of the accused is insufficient to honour the cheque or it exceeds the amount arranged to be paid from the account by an agreement

made with that bank. Though these are the only two contingences provided by the statute for initiating the proceedings against the accused for dishonour of cheque, there are various other reasons for dishonouring the cheque by the Banker and same been illustrated and explained by the Supreme Court in ***Laxmi Dyechem v. State of Gujarat, [(2012) 13 SCC 375]*** as below by referring its earlier judgments:-

> "***The question that falls for our determination is whether dishonour of a cheque would constitute an offence only in one of the two contingencies envisaged under Section 138 of the Act".***
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> *From Section 138 of NI Act, it is manifest that a dishonour would constitute an offence only if the cheque is retuned by the bank "unpaid" either because the amount of money standing to the credit of the drawer's account is insufficient to honour the cheque or that the amount exceeds the amount arranged to be paid from that account by an agreement with that bank. The High Court was of the view and so was the submission made on behalf of the respondent before us that the dishonour would constitute an offence only in the two contingencies referred to in Section 138 and none*

else. The contention was that Section 138 being a penal provision has to be construed strictly. When so construed, the dishonour must necessarily be for one of the two reasons stipulated under Section 138 and none else. The argument no doubt sounds attractive on the first blush but does not survive closer scrutiny. At any rate, there is nothing new or ingenious about the submission, for the same has been noticed in several cases and repelled in numerous decisions delivered by this Court over the past more than a decade. We need not burden this judgment by referring to all those pronouncements.

10. In NEPC Micon Ltd. vs. Magma Leasing Ltd. [*(1999) 4 SCC 253], the cheques issued by the appellant-company in discharge of its liability were retuned by the company with the comments 'account closed'. The question was whether a dishonour on that ground for that reason was culpable under* Section 138 *of the Negotiable Instruments Act. The contention of the company that issued the cheque was that* Section 138 *being a penal provision ought to be strictly construed and when so interpreted, dishonour of a cheque on ground that the account was closed was not punishable as the same did not fall in any of the two contingencies referred to in* Section 138*. This Court noticed the prevalent cleavage in* *the judicial opinion, expressed by different High Courts in the country and rejected the contention that Section 138 must be interpreted strictly or in disregard of the object sought to be achieved by the statute. Relying upon the decision of this Court in Kanwar Singh v. Delhi Administration (AIR 1965 SC 871), and Swantraj v. State of Maharashtra (1975) 3 SCC 322 this Court held that a narrow interpretation of Section 138 as suggested by the drawer of the cheque would defeat the legislative intent underlying the provision.*

11.Relying upon the decision in State of Tamil Nadu v. M.K. Kandaswami (1975) 4 SCC 745, this Court declared that while interpreting a penal provision which is also remedial in nature a construction that would defeat its purpose or have the effect of obliterating it from the statute book should be eschewed and that if more than one constructions are possible the Court ought to choose a construction that would preserve the workability and efficacy of the statute rather than an interpretation that would render the law otiose or sterile. "

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16. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act *must be interpreted strictly or literally.* ***We find ourselves in respectful agreement with the decision in Magma case that the expression "amount of money … is insufficient to honour the cheque" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus.*** *Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act:*

16.1. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance, this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of *those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied."*

14. The clarification of the Hon'ble Supreme Court makes clear that, 'account block' or 'freezed' are a species. Insufficient fund is one of the two contingencies mentioned in section 138 of the NI Act. If the issuance of cheque without sufficient fund which is the genus, same will give cause of action to prosecute. The test is whether the fund in the account not sufficient

or exceed the limit arranged. Account blocked or freezed is species. It is not so material whether the drawer of the cheque aware or not aware of the fact about his account freeze at the time of issuing cheque. If with knowledge that the account is freezed nevertheless he issue the cheque from the account freezed, the intention to cheat is manifestly seen. Otherwise, in case, the drawer of the cheque had sufficient fund in his account but not aware that his account is freezed, in such event, the law provides him with an opportunity of making alternate arrangement to pay the cheque amount within 15 days, soon after the receipt of the statutory notice and avoid prosecution. Only if the drawer fails to pay the cheque amount within 15 days the cause of action to file complaint arises.

15. From the facts and circumstances of the instant case, obviously on the date of cheque (08/11/2019) fund in the account was not sufficient to honour. Thus, the first contingency to attract section 138 of NI Act gets satisfied. The account being freezed, the petitioner company had a opportunity to pay the cheque amount within 15 days from the date of

receipt of the statutory notice. In this case, the petitioner company had disputed the liability and not paid the cheque amount.

16. Hence, the question whether the Bank which has freezed the account can initiate the complaint for dishonor of the cheque due to account freeze and the dispute regarding liability to discharge enforceable debt, it is necessary to consider the plea of the petitioners regarding the circumstances the subject cheque purportedly given to the complainant Bank.

17. According to the petitioners, the blank cheques bearing numbers 000010 and 000011 were given to the complainant bank as security at the time of sanctioning loan. Whereas the cheque which is subject matter of the criminal complaint bears No:000035 and it is dated 08/11/2019 drawn from the account maintained at Kotak Mahindra Bank Limited. Admittedly, the account from which the cheque drawn was freezed on 04/06/2016. It is an undisputed fact that the complaint bank freezed the petitioner’s bank account about 3 years before the date of the complaint. While so, issuance

of cheque and receipt of the cheque from the debit freezed account cannot be an unknown fact for both the complainant as well as the accused/ petitioners.

18. Nonetheless, the fact whether the subject cheque was given for discharge of any enforceable liability without adequate fund in the account is the question involved in this case and same being a disputed fact, as the law mandates , the disputed facts are to be tested in the trial and not in a quash petition in exercise of power under Section 482 Cr.P.C/528 of the BNSS, 2023, the petition to quash is liable to be dismissed.

19. Hence, for the reasons stated above, **this Criminal Original Petition stands dismissed.** Consequently, connected Miscellaneous Petitions are closed.

15.10.2024

Index:yes
Internet:yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To:

The Fast Track IV Metropolitan Magistrate at George Town, Chennai.

DR.G.JAYACHANDRAN,J.

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delivery order made in
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