IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-16772-2024 (O&M)
RESERVED ON: 17.07.2024
PRONOUNCED ON:23.07.2024

NEETU RANI

.......Petitioner

VERSUS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

....Respondents

2. CRM-M-17212-2024

SUMANDEEP KAUR

.......Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

….Respondents

3. CRM-M-17810-2024

KIRANDEEP KAUR

.......Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

….Respondents

4. CRM-M-18144-2024

KULDEEP KAUR

.......Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

….Respondents

5. CRM-M-31711-2024

RACHHPAL SINGH ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS ….Respondents

6. CRM-M-31743-2024

JAGBIR SINGH ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS ….Respondents

7. CRM-M-31789-2024

JASPAL SINGH ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS ….Respondents

8. CRM-M-31842-2024

GURPREET KAUR ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS ….Respondents

9. CRM-M-31855-2024

TAJ MOHD. ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS ….Respondents

10. CRM-M-32031-2024

HARPREET KAUR ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

11. CRM-M-20089-2024

MANJIT KAUR ....Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

12. CRM-M-20164-2024

DALJIT KAUR ….Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

13. CRM-M-23702-2024

RAJWINDER KAUR ….Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

….Respondents

14. CRM-M-23976-2024

GURPREET KAUR ….Petitioner

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

15. **CRM-M-25736-2024**

DIMPLE KAUR **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
....Respondents

16. **CRM-M-27832-2024**

RAMANPREET KAUR **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
....Respondents

17. **CRM-M-28002-2024**

PARMINDER SINGH **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
....Respondents

18. **CRM-M-28018-2024**

CHARANJEET KAUR **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
....Respondents

19. **CRM-M-28028-2024**

DIKSHA PASSI **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
....Respondents

20. **CRM-M-28253-2024**

MAMTA RANI **….Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

21. **CRM-M-28263-2024**

GURJOT KAUR **….Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

22. **CRM-M-28416-2024**

RAJVEER KAUR **….Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

23. **CRM-M-28501-2024**

RAMANPREET **….Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

24. **CRM-M-14482-2024 (O&M)**

GAGANDEEP KAUR **….Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

25. CRM-M-18123-2024

DAVINDER SINGH ALIAS DEVINDER SINGH
….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

26. CRM-M-16781-2024

MANPREET KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

27. CRM-M-18046-2024

MANPREET KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

28. CRM-M-19357-2024

RAMANDEEP KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

29. CRM-M-17332-2024

SUKHDEEP KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

30. CRM-M-19574-2024

INDERJEET SINGH ….Petitioner

VS

GURUKUL VIDYAPEETH INSTITUTE OF ENGINEERING AND TECHNOLOGY AND ORS.
….Respondents

31. CRM-M-17162-2024

JASPREET KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

32. CRM-M-18297-2024

HARPREET KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

33. CRM-M-18428-2024

MANPREET KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

34. CRM-M-21309-2024

JASWINDER KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

35. CRM-M-21546-2024

SANDEEP KAUR ….Petitioner
VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS
….Respondents

36. **CRM-M-21611-2024**

JYOTI **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

....Respondents

37. **CRM-M-27842-2024**

KAMALDEEP KAUR **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

....Respondents

38. **CRM-M-22411-2024**

KAMALJEET KAUR **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

....Respondents

39. **CRM-M-19693-2024**

MANPREET KAUR **....Petitioner**

VS

GURU NANAK COLLEGE OF EDUCATION AND OTHERS

....Respondents

40. **CRM-M-20828-2024**

GURPREET SINGH SEHGAL **....Petitioner**

VS

GURUKUL VIDYAPEETH INSTITUTE OF ENGINEERING AND TECHNOLOGY AND OTHERS

....Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL.

Present: Mr. Yagyadeep, Advocate,
Mr. Rajesh Kumar, Advocate,
Mr. Vinay Kumar Begra, Advocate,

Mr. T.S. Chauhan, Advocate
Mr. Karanpreet Singh, Advocate and
Mr. Davinder Singh, Advocate
for the petitioners in CRM-M-16772-2024, 17212-2024, 31711-2024, 17810-2024, 18144-2024, 31743-2024, 31789-2024, 31842-2024, 31855-2024, 32031-2024, 20089-2024, 20164-2024, 23702-2024, 23976-2024, 25736-2024, 27832-2024, 28002-2024, 28018-2024, 28028-2024, 28253-2024, 28263-2024, 28416-2024, 28501-2024, 14482-2024, 16781-2024, 18123-2024, 16781-2024, 18046-2024, 19357-2024, 17332-2024, 17162-2024, 21309-2024, 21546-2024, 21611-2024, 27842-2024, 22411-2024 and 19693-2024.

Mr. Vikas Bali, Advocate
for the petitioner in CRM-M-17810-2024, 18144-2024, 18123-2024, 18046-2024, 19357-2024, 18297-2024 and 18428-2024.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel
for UOI-respondent No.3 in CRM-M-16772-2024, 17810-2024
17212-2024, CRM-M-20089-2024, CRM-M-20164-2024
CRM-M-23702-2024, CRM-M-23976-2024
CRM-M-25736-2024, CRM-M-27832-2024
CRM-M-28253-2024, CRM-M-14482-2024 and connected cases, CRM-M-17162-2024, CRM-M-18297-2024,
CRM-M-18428-2024, CRM-M-21309-2024,
CRM-M-21546-2024, CRM-M-21611-2024,
CRM-M-27842-2024, CRM-M-22411-2024,
CRM-M-19693-2024

Ms. Divya Sharma, Advocate, Senior Panel Counsel
for respondent No.3-UOI in CRM-M-31711-2024, 31743-2024, 31789-2024, 31842-2024, 31855-2024, 32031-2024, 28263-2024, 28028-2024, 28416-2024, 28018-2024 and 28002-2024.

Mr. Surinder Singh Walia, Advocate,
Mr. Bhupinder Singh Walia, Advocate,
Ms. Gursimran Walia, Advocate and
Mr. Deep Inder Singh Walia, Advocate
for respondent No.1 in CRM-M-31855-2024, 31789-2024, 31842-2024, 31743-2024, 31711-2024, 18144-2024, 20089-2024, 20164-2024, 27832-2024, 19357-2024, 18123-2024, 18297-2024, 18428-2024, 21546-2024 and 19693-2024.

Mr. TPS Makkar, Advocate for
Mr. Satnam Singh, Advocate in CRM-M-19574-2024 and
CRM-M-20828-2024.

SANDEEP MOUDGIL. J.

Relief Sought

1. Vide this common order, I shall be disposing of all the aforesaid petitions i.e. CRM-M-16772-2024, CRM-M-17212-2024, CRM-M-17810-2024, CRM-M-18144-2024, CRM-M-31711-2024, CRM-M-31743-2024, CRM-M-31789-2024, CRM-M-31842-2024, CRM-M-31855-2024, CRM-M-32031-2024, CRM-M-20089-2024, CRM-M-20164-2024, CRM-M-23702-2024, CRM-M-23976-2024, CRM-M-25736-2024, CRM-M-27832-2024, CRM-M-28002-2024, CRM-M-28018-2024, CRM-M-28028-2024, CRM-M-28253-2024, CRM-M-28263-2024, CRM-M-28416-2024, CRM-M-28501-2024, CRM-M-14482-2024, CRM-M-18123-2024, CRM-M-16781-2024, CRM-M-18046-2024, CRM-M-19357-2024, CRM-M-17332-2024, CRM-M-19574-2024, CRM-M-17162-2024, CRM-M-18297-2024, CRM-M-18428-2024, CRM-M-21309-2024, CRM-M-21546-2024, CRM-M-21611-2024, CRM-M-27842-2024, CRM-M-22411-2024, CRM-M-19693-2024 and CRM-M-20828-2024, as common question of law is involved in all the petitions.

2. To avoid any repetition the facts are being taken from CRM-M-16772-2024.

3. The jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Code') has been invoked to quash the Complaints lodged by ***GURU NANAK COLLEGE OF***

EDUCATION filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act') with further prayer also to set aside the summoning Orders of various dates issued qua the respondents-students in these bunch of petitions passed by Judicial Magistrate Ist Class, Ludhiana.

Question

4. The question involved for adjudication before this Court as has arisen is "Whether the complaint under Section 138 of Negotiable Instruments Act, 1881 against the petitioners belonging to Scheduled Caste category students for alleged dishonoring of cheque obtained by respondent-College is justified and legal".

Factual Backdrop

5. To culminate in short facts involved herein that the petitioners being member of Scheduled Caste availed admission in B.Ed. Course for the Sessions 2017-2019 with the respondent-College. The said admission is a sponsored seat under the Central Government, Post Matric Scholarship Scheme for such scheduled castes students, whose family income is less than 2.5 lacs per annum.

6. It is at the initial stage itself while making admissions, the respondent-College obtained blank cheques signed from the petitioners-students with the objective that after availing the sponsored seat, they should not drop out mid-way from the course which might have amounted to wastage as well as taking away legal right of such like other students who would have opted for the said course in place of such petitioners-students.

However, much later to the completion of course by the petitioners-students in the year 2019, the respondent-College presented these blank cheques to the bank for encashment which were allegedly dishonoured and on that account, it initiated legal proceedings under Section 138 of Negotiable Instruments Act, 1881 against all the students of this category in question. It is against such complaints as well as summoning orders passed therein by the Judicial Magistrate Ist Class, the present petitions have been preferred for quashing of complaints as well as subsequent summoning orders passed qua all the petitioners in different petition on different dates out of which the lead case is "***Guru Nanak College of Education versus Neetu Rani"***, consists of COMA/4747/2023 (Annexure P-17) with the summoning order dated 08.09.2023 (Annexure P-18) in CRM-M No.16772 of 2024.

<u>Contentions</u>

<u>On behalf of the petitioners</u>

7. It has been contended on behalf of the petitioners that they all being a member of Scheduled Caste, took admission in B.Ed. Course (2017-2019) in the respondent-College under Post Matric Scholarship Scheme (hereinafter referred to as ' Scholarship Scheme') of the Central Government for Scheduled Castes students, meaning thereby, the Union of India and the Government of Punjab holds the legal liability to extend financial help and support to the petitioners, whose family income is less than 2.5. lakh per annum by way of endorsing their complete education post Matriculation. The petitioners would further submit that in the afore-said Scholarship Scheme earlier annual ceiling was Rs.1 Lakh, however, the same was increased to Rs.2 Lakh and subsequently to Rs.2.5 Lakh in the year 2013. Further a reference has been made to the instructions dated 11.07.2007 (Annexure P-3) issued by the Government of Punjab wherein, it was

categorically stated that the tuition fees and the non-refundable fees covered under the Scholarship Scheme are not to be charged from the students but to be reimbursed by the concerned institution as per the norms of the Scholarship Scheme. The petitioners would further say that it has been also mentioned in the said instructions, while sending the claim for reimbursement the Head of the Institution concerned is required to give an affidavit, stating that the fees has not been charged from the students.

8. The assertion is that, the respondent-State issued instructions from time to time dated 10.12.2012, 20.03.2013, 15.06.2013 and 22.07.2014 (Annexure P-7) wherein, it was directed that the Scheduled Caste students would be given admissions without charging any fees and the colleges/universities/institutes (Government & Private both) would receive reimbursement for the same directly from the respondent-State (Government of Punjab) once the same has been received from the Government of India, meaning thereby, the students had no legally enforceable liability towards the college/universities/institutes.

9. It is also the submissions for the petitioners that they were required to sign an affidavit confirming their status as a member of a Scheduled Caste which explicitly stated that the petitioners fees would be covered by the Government, as per the Punjab Government's Department of Welfare guidelines (Letter No. 3/74/07 SA-11) and also clarified that if the Government fails to pay the fees, due to any reason whatsoever, the petitioners would be personally liable to pay the entire fees amount but in the case of the petitioners there was neither any shortcoming in the documents nor did did they gave any wrong statement.

10. On behalf of the petitioners, it is vehemently pressed into argument that the respondent-College asked the petitioners to submit four signed-blank, bank cheques as a security measure to ensure that she would not drop out from the course, although this action was *ultra vires* and contravened the Scholarship Scheme, the petitioner(s) felt compelled to comply with the aforesaid action of the respondent-college. In good faith, the petitioners stated to have deposited the cheques in question. On the assurance given by the respondent-college that the cheques in question would be returned upon the completion of the course, but the respondent-college did not adhere to the said promise even after the course was accomplished. It is also stated before this Court that the respondent-college exhibited egregious behavior by exploiting the disputed blank cheques in question obtained from the petitioners six years prior, supposedly as a security measure but it was with malicious intent as the respondent-college filled-in the cheque with the amount of ₹100,000, dated 02.02.2023, and presented the same to the bank for encashment though was bound to be dishonored since it was presented without the knowledge of the petitioners and moreover with having no legally enforceable debt against them. The petitioners would submit that the cheques in question were returned back with remarks "*INSUFFICIENT FUNDS"*.

<u>On behalf of the respondents</u>

11. It has been contended on behalf of respondent No. 1 that the petitioners student being from Scheduled Caste, took admission in course for B.Ed via the Post Matric Scholarship Scheme in the respondent-college. However the petitioners claim is that they are exempted from paying non-

refundable deposits being students under the Scholarship scheme. But, at the time of admission, the students/parents signed an undertaking/affidavit stating that wherein, the government fails to pay the fees on thew behalf the students under the above mentioned Scholarship scheme, due to any shortcomings or any other reasons whatsoever, the student would hold the liability to compensate the institute for the same. It is undisputed that under the Scholarship Scheme, the scholarship fees were to be directly deposited in the bank account college by the respondent-State. The respondent-College has requested the students, who have not paid the tuition fees, to deposit the amount for the same, stating the government will directly transfer the fees into their bank accounts as per government notifications. In response, the students/parents, referencing the undertaking/affidavit signed at the time of admission, have issued cheques to settle their outstanding debts. It is asserted that under Sections 138 and 139 of the Act the Court has mandate to presume the liability of the drawer for cheque issued for the drawn amount. Consequently, the burden lies with the petitioner to rebut the presumptions under Sections 138 and 139 of the Act, and this can only by done by providing sufficient evidence to disprove them. Moreover, this Court has no jurisdiction to entertain a petition challenging the use of security cheques without providing substantial evidence in trial. Moreover, the claim made by the petitioner(s), alleging that documents were withheld due to non-payment of fees, is refuted by the respondents. They emphasis that educational transcripts were duly provided upon request, without any linked disputes regarding fee non-payment. Hence, he prays for dismissal of the instant petition(s).

12. Learned counsel for respondent No.3-Union of India, Department of Social Justice and Empowerment has contended that the Scholarship Scheme is a centrally sponsored initiative implemented by State Governments and UT Administrations. The Central Government provided financial assistance for amounts exceeding the State's Committed Liability, as per scheme guidelines up to the year 2019-20. The Committed Liability was reviewed at the end of each Plan Period/Finance Commission Cycle, and State Governments were themselves liable for allocating funds in their annual budgets subsequently. As the implementing agency, State Governments were tasked with inviting applications and distributing endorsements to beneficiaries in accordance with Scholarship scheme. It was further contended that the Central Government had already released the financial assistance as per the demand of the State for the period up to the year 2016-17 under the Scholarship Scheme for onward disbursement to the eligible beneficiaries/institutes. Although applications have been called for but no budget provision has been made by the respondent-State for covering the students applying in 2017-18, 2018-19 and 2019-20 in accordance with the Scholarship Scheme and hence, no scholarships have been disbursed. The Ministry had released to the respondent-State, the entire due central assistance amounting to Rs.309.21 Crores in March/April of 2020, however, out of this amount, respondent-State could not utilize Rs.140.36 Crores and the same was adjusted during release of Central Assistance to the State for the year 2020-21. Thus, nothing remains to be paid for the period up to the year 2020-21 by the Central Government as the entire dues have been paid and the onus to release of funds for endorsement to beneficiaries rests with

the respondent-State. Moreso, vide letter dated 09.07.2020, respondent No.3 advised the respondent-State to immediately release the funds due to the eligible institutions/students under the Scholarship Scheme and submit utilization certificate.

13. Heard learned counsel for the respective parties.

14. After giving considerable thoughts to the submissions as recorded above and the documentary material before this Court, the examination would be narrowed down to the effect that if the Central Government delayed the grant but paid later in the year 2020, whether the petitioners-students can be made liable for prosecution under Section 138 of Negotiable Instruments Act, 1881.

15. Before proceeding further, it would be apposite to have a glance at the essential ingredients of Section 138 of the Act:

1. *The cheque must have been drawn for discharge of existing debt or liability.*
2. *Cheque must be presented within 3 months or within validity period whichever is earlier.*
3. *Cheque must be returned unpaid due to insufficient funds or it exceeds the amount arranged.*
4. *Fact of dishonour be informed to the drawer by notice within 30 days.*
5. *Drawer of cheque must fail to make payment within 15 days of receipt of the notice."*

16. The Negotiable Instrument Act establishes two presumptions: Section 118 presumes that every negotiable instrument was made for consideration, and Section 139 presumes that the holder of a cheque received it to discharge a debt or liability. These presumptions are crucial for invoking

Section 138. When read together, Sections 118, 139, and 138 lead to two conclusions:

> *1. To hold the drawer liable, it must be shown that the cheque was issued to discharge a liability or repay a legally enforceable debt.*
> *2. If the first condition is met, the presumption favors the holder, assuming the cheque was issued to discharge the liability, unless proven otherwise.*

17. A close examination of Section 138 reveals that it applies when a cheque, issued to discharge a legally enforceable debt or liability, is dishonored. However, in this case, the respondent-College obtained the cheque from the petitioner in 2017, not for encashment to discharge a liability, but rather as a coercive measure to prevent the student from leaving the course midway.

18. In the instant case, the petitioners student availed the admission in B.Ed. course for the Session 2017-19 specifically under a policy namely Central Government Matric Scholarship Scheme under which the seat is sponsored one for the Scheduled Castes category students and the State Government is under legal obligation to implement the same. A detailed scheme was issued and out laid by the Government of India in the year 2010 (Annexure P-1) to be implemented w.e.f. 01.07.2010 having the objective to provide financial assistance to the Scheduled Castes students. Vide Clause IV of the said Scheme, the ceiling was increased to 2.5 lacs w.e.f. Academic Sessions 2013-14 wherein the components vide Clause V reads as under:-

i. maintenance allowance,

ii. reimbursement of compulsory non refundable fees,

iii. study tour charges,

iv. thesis typing/printing charges for Research Scholars,

v. book allowance for students pursuing correspondence courses,

vi. book bank facility for specified courses, and

vii. additional allowance for students with disabilities, for the complete duration of the course.

19. The perusal of instruments dated 22.07.2014 (Annexure P-7) and 12.08.2015 (Annexure P-8) further crystallize for consideration that the Government of Punjab-respondent No.2 directed the concerned Departments including Department of Education (Colleges) that no fee is to be charged from any Scheduled Caste at the time of admission from the eligible Scheduled Castes students w.e.f. Session 2007-08 and the concerned institutes would be reimbursed the fee by the Director, Department of Welfare, Punjab. The relevant part of such instructions dated 12.08.2015 needs to be incorporated hereinbelow to have a ready reference:-

> *1. All the Govt. Educational Institution shall give admission to the students from Scheduled Castes without charging the non-refundable fees. The expenses pertaining to the fees would be transferred to the account of the Institutions and the expenses pertaining to maintenance allowance shall be transferred in the account of students through the online system.*
>
> *2. In view of the decision of Hon'ble High Court dated10.10.2014, the recognized alded and non alded Institution which charge non-refundable fees from the students belonging to Scheduled Castes, they would*

mention in the receipt in writing with an undertaking that they would not claim for the same from Government and these students shall get the compulsory non-refundable fees and maintenance allowance in the bank accounts through online Banking management by the Department of Welfare.

3. The aided and non-aided institutions of the State of Punjab which give admission to the Students of Scheduled castes without charging compulsory non-refundable fees, they can get reimbursement from the department of welfare through their Implementing departments. Reimbursement of the compulsory non-refundable fee, would be made in the Bank Accounts of the institution by the welfare department through online banking management system and the maintenance allowance would be transferred in the Bank accounts of the students through online banking management system by the Department of Welfare.

4. The Department of Welfare would reimburse the Post-Matric Scholarship for the year 2015-16 of non-refundable fees after getting the same from Government of India.

20. Similar is the essence of the notification dated 22.07.2016 (Annexure P-9), which emphasized on similar lines for implementation of the

Welfare Scheme of the State Government facilitating higher education to Scheduled Castes students, which read as under:-

> *"Para 3- Private institutes of Punjab State, which give admission to the eligible Scheduled Castes Students without charging the fees, shall be reimbursed the fee from the Welfare Department through their implementing departments. Payment of fee shall be made by the Welfare Department in bank accounts of the institutes and maintenance allowance will be made in bank accounts of the students through online banking management system by the Welfare Department.*
>
> *Para 4 The Private Institutes/ Private Universities which give admission to Scheduled Caste students and are willing to get reimbursement from the State Government, they have to give following undertaking every year by 30th August on Stamp Paper about not charging fee from Scheduled Caste students, through implementing department to Welfare Department:-*
>
> *a. That it has been given in the prospectus about not charging fee from Scheduled Caste students;*
>
> *b. Maximum publicity was done in the area and it has also written on notice board;*
>
> *c. Shall not claim more fee (lowest applicable fees, of Govt. Institutions/ Govt. Universities, for each course) than Government Institutes/Government Universities;*
>
> *If the institutes do not give above undertaking in time, their reimbursement shall not be considered.*
>
> *Apart from above, institutes shall require to inform the Director Welfare Department through its implementing department before one week from the admissions, "Institute is giving admission without charging fee and no any other fee is being charged except refundable fee".*

PARA 5- Students not completing their course shall not be given scholarship (maintenance allowance + fee) under the scheme. Students who do not complete their course and if scholarship has been given to the students, then it would be recovered from the student and if has been reimbursed to the institute then it would be recovered from the institute.

PARA 12- above notification shall be implemented from Academic Session 2016-2017.

**Fees means, charges such as, admission, registration, examination, tuition, games, union, library, magazine, medical examination etc. That these all fees are reimbursed by the Government to Private/Government Institutes/Universities directly in their accounts.*

It will not include caution money, security deposit, which is refundable in nature. (These all fees are not reimbursed by the Government to Private/Government Institutes/Universities because this is being reimbursed to the students on completion of the course.)"

21. The scrutiny of aforesaid instructions/notifications makes it abundantly clear that the State of Punjab has issued directions for the respondent-college as well through the Director, Department of Education (Colleges) to the effect that SC students would be given admission in the B.Ed. course without charging of fees, meaning thereby, the respondent-college while giving admission to the petitioners-students under the said Scheme have owned the responsibility for making admission without charging fee which was to be reimbursed to it by the State Government.

Analysis

22. From the discussion made hereinabove, I am of the firm view that the State of Punjab has duly adopted the Central Government Post Matric Scholarship Scheme for the Scheduled Castes students like the petitioners as such was under a legal obligation to do so once it admitted the petitioners for the B.Ed. course with the Session term 2017-19. The blank cheques got signed from the students was for the sole objective of ensuring that the petitioners-students should not abandon the course mid-way after the Central Government and the State Government under the said Scheme had incurred expenses for their education rendering it to be a waste apart from loosing a seat against such student. It is also a matter of record that the complaint under Section 138 of Negotiable Instruments came to be filed in the year 2023 as the cheque in question were presented in the Bank also in the year 2023 after having got signed them at the time of admission in the year 2017. As such, there was no cause of action or occasion for the respondent-college to fill up the said cheque with a post date of more than six years i.e. much later even to the completion of course by the petitioners in the year 2019 to whom even the degrees stand issued by the University.

23. As is the mandate of law and ingredient of Section 138 of Negotiable Instruments Act, 1881 that a cheque must be presented within three months or within the validity period whichever is earlier, the complaints in the instant bunch of petitions have failed to fulfil this part as well. It is to be worth noticing here that admittedly cheques were got signed from the petitioners were blank and later on filled up by the respondent-college itself without obtaining any consent from the petitioners-students or even

informing them about the presentation of same for encashment to the Bank. The petitioners-students came to know about said act of respondent-college only on receipt of a legal notice and in most of the cases only after summoning orders were issued.

24. In the light of this background, the petitioners-students were not under any obligation and cannot even be expected to make sure that at the time of presentation of cheque, the funds should be sufficient for encashment.

25. Moreover, as has been laid down in ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel, 2022 SCC Online SC 1376***, decided on 11.10.2022, there has to be a legitimate debt or liability to be discharged on the part of the accused-petitioners/students. The relevant part of the same reads as under:-

> *30. In view of the discussion above, we summarise our findings below:*
> *(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;*
> *(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;*
> *(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed*

> *upon maturity, then the offence under Section 138 will stand attracted;*
> *(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and*
> *(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount."*

26. In the bunch of petitions in hand, this Court is duly convinced and satisfied in the light of Central Government, Post Matric Scholarship Scheme and the notification dated 22.07.2019 (Annexure P-9) the students-petitioners do not have any such legitimate debt or liability to be discharged on account of which it could be said that the cheques ought to have been honored by the Bank at the time of their presentation in the year 2023.

27. The petitioners had no legitimate debt or liability to discharge. In fact, the petitioner completed her B.Ed. Course in 2019, and therefore, the respondent-colleges had no authority to recover college fees from the student, as per notification (Annexure P-9). The presentation of cheques for encashment clearly tantamounts to *mala-fide* and mischievous act on the part of the respondent-College which is an absolute abuse of process of law.

28. If the prosecution of petitioners-students is permitted to continue, wherein as per the facts and material before this Court, in all strong probabilities the complaints might be dismissed lacking ingredients of

Section 138 of Negotiable Instruments Act, 1881 as has been discussed hereinabove and as such, it would be a grave miscarriage of justice as well.

29. In view of discussions made hereinabove, the present petitions are allowed and the impugned complaints under Section 138 of Negotiable Instruments Act, 1881 along with summoning orders along with all subsequent proceedings are hereby quashed.

30. Ordered accordingly.

23.07.2024 **(SANDEEP MOUDGIL)**
Poonam Negi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No