



2024:DHC:6034



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6889/2022 & CRL.M.A. 26699/2022**

LHAKPA TSERING

.....Petitioner

Through: Mr. Ajay Chawla, Advocate.

versus

JAGDISH LAL

.....Respondent

Through: Mr. Yashpreet Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 482 Cr.P.C has been filed by the Petitioner seeking quashing of the Complaint Case bearing CT Case No.2001/2020, tilted as "Jagdish Lal vs. Lhakpa Tsering" filed against the Petitioner. The Petitioner has also challenged the Order dated 01.08.2022 passed by the Ld. Metropolitan Magistrate (NI Act)-03, South East District, Saket Courts, New Delhi whereby summons had been issued to the Petitioner in the said Complaint.

2. It is the case of the Respondent that he had lent a sum of Rs.60,000/- in cash to the Petitioner in year 2009. It is stated that in the year 2012, a sum of Rs.4,40,000/- was further lent to the Petitioner through various cheques. It is stated that a promissory note was executed by the Petitioner in the year 2012 in respect of the sum of Rs.60,000/- borrowed by the Petitioner in cash and Rs.4,40,000/- borrowed by way of cheques, thereby totalling the amount of Rs.5,00,000/-.



3. It is the case of the Petitioner that the Petitioner had issued 12 cheques of Rs.24,000/- each to the Respondent, all drawn on Syndicate Bank, Connought Circus, New Delhi. It is stated that the Petitioner had already repaid a sum of Rs.90,000/- to the Respondent through a few cheques.

4. It is stated that the cheques were deposited by the Respondent on 10.12.2019. It is stated that out of 12 cheques, 3 cheques were honoured and the remaining 9 cheques were dishonoured and the details of the same read as under:

S. No.	Cheque No.	Date	Amount (INR)
1.	487260	20.10.2019	Rs.24,000/-
2.	487261	20.10.2019	Rs.24,000/-
3.	487262	20.10.2019	Rs.24,000/-
4.	487266	30.10.2019	Rs.24,000/-
5.	487267	30.10.2019	Rs.24,000/-
6.	487268	30.10.2019	Rs.24,000/-
7.	487269	31.10.2019	Rs.24,000/-
8.	487270	31.10.2019	Rs.24,000/-
9.	487271	31.10.2019	Rs.24,000/-
Total			Rs.2,16,000/-

5. A legal notice under Section 138 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as "NI Act"*) was issued by the Respondent to the Petitioner demanding a sum of Rs.8,23,000/- within 15 days which is more than the cheques' amount which were dishonoured. Thereafter, the Complaint Case bearing CT Case No.2001/2020 was filed against the Petitioner on 20.02.2020 and summons was issued to the Petitioner on 01.08.2022.

6. Learned Counsel appearing for the Petitioner contends that the complaint under Section 138 of the NI Act can be instituted only if the cheques are issued for a legally enforceable debt or other liability. He states



that the loans were given to the Petitioner in the year 2012 and the cheques have been deposited by the Respondent in the year 2019 and, therefore, the debt cannot be said to be a legally enforceable debt.

7. *Per contra*, learned Counsel appearing for the Respondent submits that the issue as to whether cheques were issued for a legally enforceable debt or other liability should be decided only at the time of trial and not at this stage. He, therefore, states that the complaint is maintainable.

8. Heard learned Counsel appearing for the Parties and perused the material on record.

9. Section 138 of the NI Act reads as under:

"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 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.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

The explanation appended to Section 138 of the NI Act indicates that a cheque can be issued only for a legally enforceable debt or other liability.

10. It is necessary to keep in mind that a cheque is a promise to pay a certain amount of money to the holder of the cheque. Section 25(3) of the Indian Contract Act, 1872 stipulates that a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is an enforceable contract.

11. The issue as to whether by subsequent conduct did the Petitioner promise the Respondent to pay the amount or not is a question of fact which can be decided only in trial. The Apex Court in Yogesh Jain vs. Sumesh Chadha, **2022 SCC OnLine SC 2195** has held that the issue as to whether



the debt is time barred or is legally enforceable or not ought not to be considered at the initial stage. The Apex Court in the said Judgment has observed as under:

"5. The High Court seems to have proceeded on the footing that there is no averment in the entire complaint as regards any kind of acknowledgment of the said debt by the accused within the period of three years i.e. within the limitation period of recovering the debt.

6. It appears prima facie from the materials on record that the loan was advanced sometime in the year 2011. The cheque in question duly issued by the accused for the discharge of the debt is dated 01.11.2018 and complaint for the offence under Section 138 of the N.I. Act was lodged on 14.01.2019. It appears that the High Court has gone by the date of the loan transaction to be precise the year of the loan transaction. If a cheque is issued on 01.11.2018 for the discharge of the debt incurred in the year 2011 then prima facie it could be said to be an acknowledgement of the debt. This aspect needs to be re-considered by the High Court in its true perspective. The High Court in its impugned order¹ has observed as under:—

“There is no averment in the entire complaint as regards any kind of acknowledgement of the said debt by the petitioner within the period of three years i.e. the limitation period to recover the debt. Thus, there being no acknowledgement by or on behalf of the accused, it cannot be said that the complaint filed in respect of the said debt was maintainable.”

7. Thus, what is sought to be conveyed by the High Court is that the acknowledgement of the debt at the instance of the accused should have been within three



years from the date of transaction and there is no averment in the complaint in this regard. We fail to understand such a line of reasoning by the High Court. We say so because the loan which was advanced of Rs. Five Lakh by the complainant to the accused was for a period of seven years. Prima facie, it appears that the liability towards repayment of the loan was to be discharged within a period of seven years. If that be so, then on what basis the initial first three years have been taken into consideration by the High Court for the purpose of counting the limitation. Perhaps what is in the mind of the High Court is that by the time, the cheque in question was issued the debt had become barred by limitation because no acknowledgement was obtained before the expiry of three years from the date of loan. However, as noted above, the understanding was to discharge the liability within a period of seven years. Prima facie, we are of the view that the period of limitation would start reckoning from the expiry of the period of seven years.

8. Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under Sections 118 and 139 resply of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the accused under Section 482 of the CrPC."

(emphasis supplied)

12. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. In the opinion of this Court, the true purport of Section 138 of the NI Act would not be fulfilled if the debt or other liability is interpreted to



2024:DHC:6034



include only a debt that exists as on the date of drawing of the cheque. The Parliament has used the expression debt or other liability and the explanation appended to Section 138 of the NI Act states that the debt would mean a legally enforceable debt, however, the expression also uses the word other liability. In the opinion of this Court, the word other liability would have to be something other than a legally enforceable debt and must be given a meaning of its own. The legislature has purposely used two distinct phrases i.e., legally enforceable debt and other liability. The Apex Court in Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578 has observed as under:

"17. In Sunil Todi v. State of Gujarat [Sunil Todi v. State of Gujarat, (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174] , a two-Judge Bench of this Court expounded the meaning of the phrase "debt or other liability". It was observed that the phrase takes within its meaning a "sum of money promised to be paid on a future day by reason of a present obligation". The Court observed that a post-dated cheque issued after the debt was incurred would be covered within the meaning of "debt". The Court held that Section 138 would also include cases where the debt is incurred after the cheque is drawn but before it is presented for encashment. In this context, it was observed : (SCC para 30)

"30. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment. In Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.,



*(2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] , advance payments were made but since the purchase agreement was cancelled, there was no occasion of incurring any debt. **The true purpose of Section 138 would not be fulfilled, if “debt or other liability” is interpreted to include only a debt that exists as on the date of drawing of the cheque. Moreover, Parliament has used the expression “debt or other liability”. The expression “or other liability” must have a meaning of its own, the legislature having used two distinct phrases. The expression “or other liability” has a content which is broader than “a debt” and cannot be equated with the latter. In the present case, the cheque was issued in close proximity with the commencement of power supply. The issuance of the cheque in the context of a commercial transaction must be understood in the context of the business dealings. The issuance of the cheque was followed close on its heels by the supply of power. To hold that the cheque was not issued in the context of a liability which was being assumed by the company to pay for the dues towards power supplied would be to produce an outcome at odds with the business dealings. If the company were to fail to provide a satisfactory LC and yet consume power, the cheques were capable of being presented for the purpose of meeting the outstanding dues.”***

18. The judgments from Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] to Sunil Todi [Sunil Todi v. State of Gujarat, (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174] indicate that much of the analysis on whether post-dated cheques issued as security would fall within the purview of Section 138 of the Act hinges on the



relevance of time. In Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] , this Court held that for the commission of the offence under Section 138, there must have been a debt on the date of issuance of the cheque. However, later judgments adopt a more nuanced position while discussing the validity of proceedings under Section 138 on the dishonour of post-dated cheques. This Court since Sampelly Satyanarayana Rao [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149] has consistently held that there must be a legally enforceable debt on the date mentioned in the cheque, which is the date of maturity.

19. *This Court in NEPC Micon Ltd. v. Magma Leasing Ltd. [NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253 : 1999 SCC (Cri) 524 : AIR 1999 SC 1952] held that the courts must interpret Section 138 with reference to the legislative intent to suppress the mischief and advance the remedy. The objective of the Act in general and Section 138 specifically is to enhance the acceptability of cheques and to inculcate faith in the efficacy of negotiable instruments for the transaction of business. [Sunil Todi v. State of Gujarat, (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174] Section 138 criminalises the dishonour of cheques. This is in addition to the civil remedy that is available. Through the criminalisation of the dishonour of cheques, the legislature intended to prevent dishonesty on the part of the drawer of a negotiable instrument. [Electronics Trade & Technology Development Corpn. Ltd. v. Indian Technologists & Engineers (Electronics) (P) Ltd., (1996) 2 SCC 739 : 1996 SCC (Cri) 454] The interpretation of Section 138 must not permit dishonesty of the drawee of the cheque as well. A*



2024:DHC:6034



cheque is issued as security to provide the drawee of the cheque with a leverage of using the cheque in case the drawer fails to pay the debt in the future. Therefore, cheques are issued and received as security with the contemplation that a part or the full sum that is addressed in the cheque may be paid before the cheque is encashed."

(emphasis supplied)

13. The issue as to whether the debt is time barred or is legally enforceable or not or as to whether the cheques were deposited after an understanding was reached between the parties regarding payment of liability or as to whether the cheques could have been deposited at any time for repayment of liability or whether it was a part discharge of liability etc. cannot be decided at the time of issuing of summons and the same can be considered only in the trial and not at this stage.

14. In view of the above, this Court is not inclined to quash the present complaint at this juncture. The Ld. Trial Court is requested to proceed with the complaint in accordance with law.

15. The petition is disposed of, along with pending application(s), if any. It is made clear that this Court has not expressed any opinion on the merits of the case.

SUBRAMONIUM PRASAD, J

AUGUST 06, 2024

S. Zakir