IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-18243-2026 (O&M)
Date of decision: 07.04.2026

Rashmi ...Petitioner(s)

VERSUS

Veena Mittal ...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Anupam Singla, Advocate for the petitioner(s).

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VINOD S. BHARDWAJ, J. (Oral)

1. The present petition has been filed for quashing of criminal complaint bearing No. COMA/551 of 2022 dated 11.10.2022 titled as 'Veena Mittal Vs. Rashmi' which is pending before the Court of Judicial Magistrate 1st Class, Nabha, District Patiala alongwith the summoning order dated 11.10.2022, whereby the petitioner has been summoned under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel appearing on behalf of the petitioner contends that the respondent–complainant had earlier instituted a complaint under Sections 138 and 142 of the Negotiable Instruments Act, 1881, read with Section 420 of the Indian Penal Code, 1860, alleging therein that the petitioner had borrowed certain amounts from her. It is submitted that, as per the allegations in the said complaint, the petitioner had allegedly taken a sum of Rs.5,00,000/- on 02.04.2019 and a further amount of Rs.2,00,000/- on 07.05.2021, thereby aggregating to Rs.7,00,000/-. It was further alleged that

the petitioner had repaid a sum of Rs.4,50,000/- on 09.11.2021, leaving an outstanding principal amount of Rs.2,50,000/-.

3. Learned counsel further submits that, in discharge of the aforesaid liability, the petitioner allegedly issued a cheque bearing No. 399091 dated 24.08.2022 for an amount of Rs.2,72,500/- in favour of the respondent–complainant. However, upon presentation, the said cheque was dishonoured on 03.09.2022 with the remarks “Funds Insufficient”. It is contended that, thereafter, the respondent–complainant initiated the aforesaid complaint proceedings and the petitioner has been summoned to face trial in the said case.

4. Learned counsel appearing on behalf of the petitioner has argued that as per the averments made in paragraph No. 3 of the complaint, the principal amount due and recoverable from the petitioner was only Rs.2,50,000/-. In such circumstances, the cheque issued for a sum of Rs.2,72,500/- cannot be said to have been issued in discharge of a legally enforceable debt or liability, to the extent claimed. It is thus submitted that, in the absence of a legally enforceable debt, corresponding to the cheque amount, the essential ingredients of an offence under Section 138 of the Negotiable Instruments Act, 1881 are not satisfied and consequently, continuation of the proceedings would amount to an abuse of the process of law. In support of the aforesaid contention, reliance has been placed upon the judgment of the Hon’ble Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel,*** reported as (2023) 1 SCC 578, wherein it has been held that for constituting an offence under Section 138 of the Act, the cheque must have been issued in discharge of a legally

enforceable debt or liability. The relevant extract thereof 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;*
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> *(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;*
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> *(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. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."*

5. I have heard the learned counsel appearing on behalf of the petitioner and have gone through the documents appended with the instant petition, including the judgment passed in the matter of ***Dashrathbhai Trikambhai Patel*** (*supra*).

6. A specific query was put to learned counsel for the petitioner as to whether the issuance of the cheque in question is disputed. In response, it has been fairly conceded that the cheque pertains to the bank account of the petitioner and bears her signatures. It is further not the case of the petitioner that the contents of the cheque, including the amount, were not filled in by her or that the same had been filled up by the respondent–complainant. It is also evident from the record that the petitioner had initially borrowed a sum of Rs.5,00,000/- on 02.04.2019 and thereafter an additional amount of Rs.2,00,000/- on 07.05.2021. A sum of Rs.4.50 lakhs is stated to have been returned on 09.11.2021, thus, amount of Rs.2.50 lakhs in principle remained due. The cheque in dispute was issued subsequently on 24.08.2022, i.e., after the aforesaid transactions had taken place. The circumstances under which the aforesaid amount was filled up in the said cheque issued by the petitioner herein is required to be explained during the course of trial and that not every micro detail is required to be mentioned in the complaint at the time of institution. The Statute does not mandate that every detail and

aspect of the dispute is required to be explained at the stage of institution of the complaint.

7. In so far as the reliance placed upon the judgment of the Hon'ble Supreme Court and the principle emerging therefrom is concerned, the said judgment(s) are not applicable to the case in hand. The judgments are referred to herein:-

(i) Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and others, reported as (2023) (1) RCR (Criminal) 408 (Supreme Court)

(ii) M/s. M.B. Metal Industries Vs. M/s Vijay Impex, CRM-M-44212-2014 decided on 14.12.2015 (Punjab and Haryana High Court.

(iii) M/s. Alliance Infrastructure Project Pvt. Ltd. and others Vs. Vinay Mittal, reported as 2010 (2) RCR (Criminal) 525 (Delhi High Court).

8. In all these three judgments, part payments were made after the issuance of the cheques. In its order of acquittal, in the matter of Dashrathbhai Trikambhai Patel (Supra) while acquitting the accused, the Hon'ble Supreme Court specifically noticed that 'if drawer of cheque pays a part or whole of the sum between the period when cheque is drawn and when it is encashed on maturity, then legally enforceable debt on the date of maturity would not be sum represented on cheque' and it would be an offence only after such an endorsement is made on the cheque. The aspect that materially weighed in the above three judgments was making of a

payment after issuance of cheque.

9. In the present case, no amount has been paid after the cheque had been issued. Whatsoever settlement that took place amongst the parties resulted in issuance of the cheque. A statutory presumption thus arises that as on the date of issuance of cheque, the amount as mentioned on the cheque was legally due and the drawee is the holder of the cheque in due course against a legally enforceable debt.

10. Learned counsel for the petitioner contends that, in the present case, only the principal amount of Rs.2,50,000/- constituted the legally enforceable debt. Since the cheque amount is Rs.2,72,500/-, it is argued that the excess sum of Rs.22,500/- cannot be said to represent any legally recoverable liability. On this premise, it is sought to be contended that the cheque, to the extent of the excess amount, does not satisfy the requirement of being issued in discharge of a legally enforceable debt, thereby vitiating the proceedings initiated under Section 138 of the Negotiable Instruments Act.

11. I am afraid that the contention advanced on behalf of the petitioner does not merit acceptance at this stage. The plea raised by learned counsel essentially raises disputed questions of fact in relation to the enforceability of the alleged liability, which is a matter to be decided on the basis of evidence to be led by the respondent–complainant during the course of trial. At this juncture, a statutory presumption operates against the petitioner, particularly in view of the admitted position that the cheque in question pertains to her account and bears her signatures. It is also not the case of the petitioner that the contents and amount as mentioned in the

cheque were filled in by the respondent–complainant without her authority. In such circumstances, the question as to whether the entire amount reflected in the cheque represents a legally enforceable debt or liability, and the explanation for any alleged excess amount, are issues which cannot be adjudicated in proceedings of the present nature and would necessarily be subject to evidence and determination by the learned trial Court.

12. In view of the above, I find that the judgment in the matter of ***Dashrathbhai Trikambhai Patel*** (*supra*) would not advance the case of the petitioner merely because the cheque amount is marginally higher than the principal sum stated to be due. It cannot, at this stage, be inferred that the cheque was not issued in discharge of a legally enforceable debt or liability.

13. This Court further finds that the present petition appears to have been instituted primarily with a view to delay the proceedings pending before the learned trial Court, rather than on the basis of any substantial or legally tenable ground warranting interference.

14. Consequently, finding no merit in the present petition, the same is hereby dismissed.

(VINOD S. BHARDWAJ)
JUDGE

07.04.2026
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No