

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

***HON'BLE SRI JUSTICE K. LAKSHMAN**

+CRIMINAL PETITION No.628 AND 629 OF 2022

% Delivered on: 08-09-2022

Between in Crl.P. Nos.628 & 629 of 2022:

M/s. Jairam Foundry Private Limited, rep.by its
Director Nos.2 to 4, office & factory at
Mahadevpur Village of Bibinagar Mandal,
Yadadri – Bhongir District, Telangana. .. Petitioners

Vs.

\$ The State of Telangana & another .. Respondents

! For Petitioners : Mr. C. Raghu, Ld.Sr. Counsel
Rep. Mr. Lingampally Ravinder

^ For Respondent No.1 : Assistant Public Prosecutor

For Respondent No.2 : Mr. Damodar Mundra

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> Head Note :

? Cases Referred :

1. (1993) 4 SCC 424
2. (2016) 14 SCC 370
3. (2003) 3 SCC 232
4. (1998) 3 SCC 249
5. (1999) 4 SCC 253

HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL PETITION Nos.628 AND 629 OF 2022****COMMON ORDER:**

Heard Mr. C. Raghu, learned senior counsel representing Mr. Lingampally Ravinder, learned counsel for the petitioners, learned Assistant Public Prosecutor appearing for respondent No.1 and Mr. Damodar Mundra, learned counsel for respondent No.2.

2. Criminal Petition No.628 of 2022 is filed by the petitioners - accused Nos.1 to 4 to quash the proceedings in C.C. No.2643 of 2021 pending on the file of VIII Metropolitan Magistrate, Nampally, Hyderabad, while Criminal Petition No.629 of 2022 is filed by the very same petitioners to quash the proceedings in C.C. No.2644 of 2021 pending on the file of the very same Court.

3. Respondent No.2 herein is the complainant filed the aforesaid both the Calendar Cases under Section - 200 of the Cr.P.C. for the offence under Section - 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') against the petitioners herein. In C.C. No.2643 of 2021, the cheque in dispute is bearing No.236724, dated 20.09.2021 for Rs.30,00,000/- (Rupees Thirty Lakhs Only) issued by

petitioner No.1 - accused No.1 Company represented by its Authorized Signatory, Mr. Jairam Singh in the first week of May, 2021, and the same was dishonoured with an endorsement “payment stopped by drawer” on 22.09.2021. Whereas the cheques in dispute in C.C. No.2644 of 2021 are bearing Nos.292443 and 292442, both dated 03.09.2021 and 03.09.2021 for Rs.1,00,000/- and Rs.2,50,000/-, respectively issued by petitioner No.1 Company. Initially, when the said two cheques were presented, the same were returned with an endorsement ‘funds insufficient’ vide cheque return memos dated 04.09.2021. Again, when the complainant represented the said cheques, the same were returned with an endorsement ‘drawers signature differs’ on 15.09.2021.

4. In view of the above, as the issues involved and the parties except cheque numbers and C.C. numbers are common in both the Criminal Petitions and, therefore, they are being heard together and decided by way of this common order.

5. The only ground on which the proceedings in the aforesaid C.Cs sought to be quashed is that the cheques, dated 20.09.2021 and 03.09.2021 respectively in dispute were issued by petitioner No.1, a

Company, represented by its Authorized Signatory, Mr. Jayaram Singh. In fact, the cheques were issued in the month of May, 2021 and the said Authorized Signatory died on 09.06.2021 i.e., even before the date of cheques and, therefore, the cheques in dispute became void cheques. Thus, the proceedings in the aforesaid C.Cs. for the offence under Section - 138 of the N.I. Act against the petitioners herein are not maintainable.

6. In the complaints filed under Section - 200 of the Code of Criminal Procedure, 1973 for the offence under Section - 138 of the N.I. Act, the complainant in both the complaints specifically contended that petitioner No.1 - accused No.1 Company represented by its Authorized Signatory, Mr. Jairam Singh had issued the cheques in dispute in his favour in the first week of May, 2021 towards part payment assuring that the cheques would be honoured on its presentation and requested some time to pay the balance outstanding amount. In the statutory notices, both dated 01.10.2021, the said facts were also mentioned by the complainant.

7. Perusal of the record would reveal that the cheques in dispute belong to petitioner No.1 Company i.e., M/s. Jairam Foundry

Private Limited signed by late Jairam Singh. The said cheques were issued in the month of May, 2021. The cheque in relation to C.C. No.2643 of 2021 is dated 20.09.2021, while the cheques consists of three (03) in number in relation to C.C. No.2644 of 2021 are dated 05.06.2021 and 03.09.2021 respectively. The said Jairam Singh died on 09.06.2021 i.e., after issuance of the cheques and before presentation of the same.

8. As per the complaint in C.C. No.2643 of 2021, when the said cheque was deposited with respondent No.2 - complainant's banker for realization, the same was returned on 22.09.2021 with an endorsement 'payment stopped by the drawer'. Whereas, as per the complaint in C.C. No.2644 of 2021, originally, petitioner No.1 represented by its Authorized Signatory, Mr. Jairam Singh, had issued three cheques viz., cheque bearing No.092657, 292443 and 29442, dated 05.06.2021, 03.09.2021 and 03.09.2021 for Rs.23,00,000/-, Rs.1,00,000/- and Rs.2,50,000/- respectively, and when they were presented, cheque bearing No.092657 was returned with an endorsement 'payment stopped by drawer', while the other two cheques bearing No.292443 and 292442 were returned with an endorsement 'funds insufficient'. Again, when respondent No.2

represented both the cheque bearing Nos.292443 and 292442, cheque bearing No.292443 was returned with an endorsement 'funds insufficient, while other cheque bearing No.292442 was returned with an endorsement 'drawers signature differs vide bank return memo dated 09.09.2021. However, cheque bearing No.092657 could not represent due to lapse of time. Once again respondent represented both cheque bearing Nos.292443 and 292442, but they were returned with an endorsement 'drawers signature differs' vide bank return memo, dated 15.09.2021. Thereafter, respondent No.2 had issued statutory notices, both dated 01.10.2021 to the petitioners herein.

9. There is no dispute that petitioner No.1 - accused No.1 company had issued the said cheques, and petitioner Nos.2 to 4 are its Directors. To decide the *lis* involved in the present petitions, certain provisions of the N.I. Act are relevant to discuss and the same are extracted hereunder:

i) Section - 6 deals with "cheque" and according to it, a "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the

electronic image of a truncated cheque and a cheque in the electronic form.

ii) A cheque which is dated subsequent to the actual date on which it is drawn and which is issued before the date it bears is called a Post-dated cheque. Once they became due on the date they appear, they are payable on demand, a cheque post-dated remains a bill of exchange till date written on it and with effect from the date shown on the face of it becomes a cheque under the N.I. Act. The said principle was also laid down by the Hon'ble Supreme Court in **Anil Kumar Sawhney v. Gulshan Rai**¹.

iii) Post-dated cheque amounts to promise to pay and that promise would be fulfilled on the date mentioned on the cheque. The said principle was laid down by the Apex Court in **A.R. Dahiya v. SEBI**².

iv) Section - 7 of the N.I. Act deals “Drawer” and “drawee”, and it says that the maker of a bill of exchange or cheque is called the “drawer”; the person thereby directed to pay is called the “drawee”.

¹. (1993) 4 SCC 424

². (2016) 14 SCC 370

v) Section - 10 of the N.I. Act deals with “payment in due course”, and it means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

vi) Section - 30 of the N.I. Act deals with liability of drawer, and as per which, the drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

vii) Section - 31 of the N.I. Act deals with ‘liability of drawee of cheque’, and as per which, the drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

viii) Section - 138 of the N.I. Act deals with ‘dishonour of cheque for insufficiency, etc., of funds in the account’. Section - 141

of the Act deals with offences by Companies, and as per sub-Section (1) of Section 138 if the person committing an offence under Section - 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. As per Sub-section (2) of Section 141 of the Act notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The 'Company' means as per explanation (a) mentioned therein that anybody corporate and includes a firm or other association of individuals, while 'Director' in relation to a firm means as per explanation (b), a partner in the firm.

10. In view of the aforesaid Scheme of the Act, coming to the facts of the case on hand, there is no dispute that the cheques in

dispute were issued by petitioner No.1 Company signed by its Authorized Signatory, Mr. Jairam Singh. The cheques were issued in the month of May, 2021, whereas, the Authorized Signatory of petitioner No.1 Company, Mr. Jairam Singh, who signed the cheques, died on 09.06.2021. The cheques were presented and returned on 22.09.2021 and 15.09.2021 respectively. Statutory notices were issued on 01.10.2021. Thus, as on the date of issuance of the cheques, the Authorized Signatory of petitioner No.1 Company, Mr. Jairam Singh, who signed the cheques, was alive. Therefore, petitioner No.1 Company is the drawer of the cheques in dispute. Petitioner Nos.2 to 4 herein are the Directors of petitioner No.1 Company. There is a specific assertion in the complaint that petitioner Nos.2 to 4 being the Directors of the Company are always involved in the discussions in receiving the amounts, issuing the cheques and assuring the repayment of the amount and further they are looking after the affairs of petitioner No.1 Company. They actively involved in running the Company and, as such, they have also committed for the offence under Section - 138 of the N.I. Act. Thus, there is specific assertion.

11. As discussed above, petitioner No.1 Company is drawer of the cheque. Just because of the Authorized Signatory died, the said cheque cannot be treated as void cheque. A void cheque is a cheque with the word “VOID” has written across it, which prevents anyone from filling out the cheque and using it to make a payment. Whereas, in the present case, the cheques in dispute not a void cheques. Therefore, this Court is of the considered view that petitioner No.1 being a drawer of the cheques and petitioner Nos.2 to 4 being Directors of petitioner No.1 Company are liable for prosecution and the complaints filed against them for the offence under Section - 138 of the N.I. Act are maintainable.

12. However, to prove the offence under Section - 138 of the N.I. Act, initial burden lies on the complainant that cheque in dispute was issued by accused to discharge legally enforceable debt. Once the said burden is discharged by the complainant, then burden shifts on the accused. Therefore, according to this Court, the petitioners herein have to face trial and prove that they have not committed any offence under Section - 138 of the N.I. Act. Thus, the contention of the petitioners that since the Authorized Signatory of the cheques died

before date of cheques i.e., on 09.06.2021 and, therefore, the said cheques became void is unsustainable.

13. Mr. C. Raghu, learned Senior Counsel appearing for the petitioners has also placed reliance on the decision rendered by the Apex Court in **Goaplast Pvt.Ltd. v. Shri Chico Ursula D'Souza**³ and would contend that once the signatory of the cheque dies, the cheque will become void. Whereas, in the present case, the cheques in dispute belong to petitioner No.1 Company and it is a drawer and a Body Corporate. It is a separate legal entity and juristic person. The Authorized Signatory of petitioner No.1 Company died on 09.06.2021. Therefore, the cheques in dispute will not become void cheques. In the said judgment, the Apex Court relying on the principle laid down by it in **Modi Cements Ltd. Versus Kuchil Kumar Nandi**⁴ and **NEPC Micon Ltd. V. Magma Leasing Ltd.**⁵

Held as under:

"If the interpretation, which is sought for, were given, then it would only encourage, dishonest persons to issue cheques and before presentation of the cheques, close the account and thereby escape from the penal consequences

³. (2003) 3 SCC 232

⁴. (1998) 3 SCC 249

⁵. (1999) 4 SCC 253

of Section 138." Any interpretation which withdraws the life and blood of the provision and makes it ineffective and a dead letter, should be averted. It is the duty of the court to interpret the provision consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy. The legislative purpose is to permit the efficacy of banking and of ensuring that in commercial or contractual transactions, cheques are not dishonoured and credibility in transacting business through banks is maintained. The Court relied upon its earlier judgment in *Modi Cement Ltd.(supra)*. We would like to quote the following observations contained in *NEPC Micon Ltd. & Ors. Vs. Magma Leasing Ltd. (supra)*. "15. " In view of the aforesaid discussion we are of the opinion that even though section 138 is a penal statute, it is the duty of the court to interpret it consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence and the legislative purpose is to promote efficacy of banking and of ensuring that in commercial or contractual transactions cheques are not dishonoured and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above "brush away the cobweb varnish, and shew the transactions in their true light" (Wilmot, C.J.) or, (by Maxwell) "to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or

circuitous manner that which it has prohibited." Hence, when the cheque is returned by a bank with an endorsement "account closed", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the Act."

14. In view of the aforesaid discussion and also the law laid down by the Apex Court, the complaints filed by respondent No.2 in C.C. Nos.2643 of 2021 and 2644 of 2021 against the petitioners herein are maintainable. The petitioners failed to make out any case to quash the proceedings against them. Thus, both the petitions are devoid of merits and the same are liable to be dismissed.

15. Both the Criminal Petitions are accordingly dismissed.

As a sequel, the miscellaneous petitions, if any, pending in the criminal petitions shall stand closed.

8th September, 2022

K. LAKSHMAN, J

Note:

L.R. Copy to be marked.
(B/O.) Mgr