

**HIGH COURT OF MADHYA PRADESH****Date of Decision: 20th November 2023****Bench: Hon'ble Shri Justice Vijay Kumar Shukla**

MISC. CRIMINAL CASE No. 13433 of 2023

**BHAWNA CHOURASIA ...APPLICANT****VERSUS****SURYA PRATAP SINGH ...RESPONDENT****Legislation:**

Section 482 of the Cr.P.C.

Section 138 of the Negotiable Instruments Act, 1881

**Subject:** Petition for quashing a private complaint registered under Section 138 of the Negotiable Instruments Act, 1881, alleging dishonor of cheque issued by the petitioner.

**Headnotes:**

Cheque Dishonor - Allegation of Non-Repayment of Loan – Petitioner accused of not depositing a sum of Rs.11,00,000/- in a fixed deposit and issuing a dishonored cheque for Rs.10,00,000/-. [Para 2]

Abuse of Process of Law – Petitioner's contention of multiple complaints against the respondent for physical and mental torture and the non-availability of ingredients of Section 138 of the NI Act in the complaint. [Para 3]

Legal Enforceable Debt – Argument of no legally enforceable debt and absence of consideration in the complaint. Reliance on Apex Court judgment in Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders & Agencies Ltd. & Ors. to emphasize the purpose of Section 138 of the NI Act. [Para 4]

Counter-Argument – Respondent's submission on the existence of basic ingredients of Section 138 of the NI Act and legal presumptions under Section 118 of the NI Act. Citing Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) & Anr. on the presumption of discharge of liability by a cheque. [Para 6]

Section 138 NI Act – Analysis of the complaint against the requirements of Section 138 of the NI Act: legally enforceable debt, cheque drawn for discharge of debt or liability, and its dishonor due to insufficient funds. Reference to Krishna Janardhan Bhat vs. Dattatraya G. Hegde. [Para 8]

Prematurity of the Petition – Court's observation on the premature nature of the petition as the complainant's statement not fully recorded and not cross-examined. Reliance on Manoj Singhal & Anr. vs. Rajendra Singh Bapna & Anr. for emphasizing the procedure under Section 202 Cr.P.C. [Para 9-10]

Decision – Dismissal of the petition under Section 482 Cr.P.C. due to its premature nature and the prima facie establishment of the offence under Section 138 of the NI Act. [Para 11]

#### **Referred Cases:**

**Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders & Agencies Ltd. & Ors. (2001) 6 SCC 463 [Para 4]**

**Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) & Anr. 2022 SCC OnLine SC 513 [Para 6]**

**Krishna Janardhan Bhat vs. Dattatraya G. Hegde, 2008 (4) SCC 54 [Para 8]**

**Manoj Singhal & Anr. vs. Rajendra Singh Bapna & Anr. I.L.R. [2019] M.P. 1571 [Para 10]**

**(BY SHRI ANIRUDDHA GOKHALE, LEARNED COUNSEL)**

.....RESPONDENT

**(BY SHRI BHASHKAR AGRAWAL, LEARNED COUNSEL)**

.....  
*This application coming on for admission this day, the court passed the following:*

**ORDER**

The present petition is filed under Section 482 of the Cr.P.C. for quashment of the private complaint registered as SC-NIA-139/2022 pending before JMFC, Badwah for commission of offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred as **the NI Act**).

2) Facts of the case are that the respondent is husband of the petitioner and has filed a private complaint under Section 138 of the NI Act alleging that the petitioner somewhere in the year 2019 had taken an amount of Rs.11,00,000/- for the purposes of depositing it in fixed deposit account. It has been alleged that the same was not deposited in the bank as FD and hence, for repayment of the same a cheque was issued by the petitioner bearing No.054909 for an amount of Rs.10,00,000/- dated 26/08/2022 drawn on Narmada Jhabua Gramin Bank. It is also alleged that the said cheque was dishonoured and the petitioner did not pay the said amount in spite of service of notice upon her. Hence, the respondent filed a complaint against the petitioner for offence under Section 138 of the NI Act.

3) Counsel for the petitioner submits that the complaint is nothing, but an abuse of process of law as petitioner has made number of complaints against the respondent and his family members for causing physical and mental torture. He has referred the various reports made to the police station and the legal notice issued by the respondent. It is argued that the ingredients of Section 138 of the Act is not available and, therefore, the complaint is liable to be quashed.

4) It is further submitted that there is no legally enforceable debt which is basic ingredients of Section 138 of the Act. He also argued that there is no averments regarding the consideration in the complaint. In support of his submissions, he placed reliance on the judgment passed by the Apex Court in the case of ***Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders & Agencies Ltd. & Ors. (2001) 6 SCC 463***. He referred para-3 of the judgment

to support his submission that the Act was enacted and Section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instruments is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, the object of the Act cannot be achieved.

5) Per contra counsel for the respondent submitted that the basic ingredients of Section 138 of the Act is available in the complaint. He referred para-2 & 3 of the complaint which is reproduced as under:-

02 यह कि, आरोपी के द्वारा प रवादी से ववाहिके जीवन के अन्तराल म 11,00,000/- (ग्यारह लाख पये) लगभग 3 वष पूव एफ.डी. करवाने के नाम पर लये थे जो प रवादी द्वारा आरोपी को दे िदये गये थे, किन्तु आज िदनांक तक आरोपी के द्वारा किसी भी कार क कोई एफ.डी. नह करवाई गई है। इस तरह उक् त संव्यवहार िव धक ऋण क ेणी म आकर ल खत पराकाम्य अ धिनयम के तहत आकर वण योग्य है।

03 यह कि, प रवादी के द्वारा आरोपी के िदनांक 05-01-2022 के ेषित सूचनाप के जवाब म उक् त पय क माँग क थी। प रवादी के द्वारा बार-बार िनवेदन स्व प आरोपी से पैस क माँगनी क तो आरोपी ने प रवादी को िदनांक 21-06-2002 को िदनांक 26-08-2022 का नमदा झाबुआ ामीण बक का चैक मांक 054909 रािश

10,00,000/- (दस लाख पये) खाता मांक

020810110008085, दत्त करते हये, यह आश्वासन िदया कि जसै ही प रवादी उक् त िदनांक को चैक स्तुत करगे तो सकर जावेगा।

6) He also submitted that the petition is premature as the cognizance hasnot yet been taken and the statement of the complainant has been recorded, but the petitioner has sought time on two occasions for cross-examination of the respondent complainant. In support of his submissions,

he placed reliance on the judgment passed by the Apex Court in the case of ***Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) & Anr. 2022 SCC OnLine SC 513***. He submitted that there is a legal presumption of cheque having been issued in discharge of liability and the same must received due weightage. He also referred the provisions of Section 118 which leads with the presumptions as to Negotiable Instruments and the presumption is provided in regard to the consideration, as to date, as to time of acceptance, as to time of transfer, as to order of indorsements, as to stamps and the holder is a holder in due course. These presumptions are undisputedly rebuttable after the evidence.

7) To appreciate the rival submissions of the parties, it would be apposite to refer the Section 138 of the NI Act which is reproduced 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 provisions of this Act, be punished with imprisonment for 19 [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, 20 [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 or other liability” means a legally enforceable debt or other liability.]

8) As per Section 138 of the NI Act, the complaint must contain the following ingredients, viz., (i) that there is a legally enforceable debt; (ii) that, the cheque was drawn from account of bank for discharge in whole or in part of any debt or other liability, is presupposed as legally enforceable debt; (iii) cheque so issued had been returned due to insufficiency of funds. In this regard, a reference may be made to the judgment passed by the Apex Court in the case of ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde, 2008 (4) SCC 54.***

9) After hearing learned counsel for the parties and upon perusal of the complaint, it is manifest that the basic ingredients of Section 138 of the Act are available and the cognizance on the said complaint has yet to be taken. The statement of the complainant has been recorded, but the petitioner has been seeking time to cross-examine the complainant. In the case of ***Manoj Singhal & Anr. vs. Rajendra Singh Bapna & Anr. I.L.R. [2019] M.P. 1571***, a Coordinate Bench held that for quashment of a criminal complaint under Sections 200, 202, 203, 204 & 482 of Cr.P.C., it is for the Magistrate under Section 202 Cr.P.C. to enquire into the complaint, thus, mandatory proceeding is underway to determine whether complaint is to be registered or not. The statement of complainant if has yet not been recorded and the Magistrate has not even taken cognizance of the matter, thus, the petition is premature.

10) Considering the law laid down in the case of ***Manoj Singhal (supra)*** in the present case also the complaint *prima facie* makes out the ingredients of the offence and the petition is premature as the statement of the complainant has yet not been completely recorded and the complainant has not been cross-examined. The quashment of the complaint at initial stage is not warranted.

11) In view of the aforesaid, the present petition under Section 482 Cr.P.C. is **dismissed**.

No order as to costs.

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