

HIGH COURT OF HIMACHAL PRADESH**Before : Virender Singh, J.****Decided on : 27-12-2023**

Cr. MMO No. 66 of 2023

ABHISHEK RAO - PETITIONER**Vs.****STATE OF H.P. AND ANOTHER — Respondent****Sections, Acts, Rules, and Articles Mentioned**

Section 482 of the Code of Criminal Procedure (CrPC)

Section 138 of the Negotiable Instruments Act (NI Act)

Section 313 CrPC

Section 18 of the Payment and Settlement Systems Act, 2007

Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007)

Subject of the Judgment

The subject of the judgment is a petition under Section 482 of the CrPC seeking to quash a complaint and subsequent proceedings related to a dishonoured cheque under Section 138 of the NI Act. The petition revolves around the validity of a non-CTS cheque and an alleged theft of the cheque.

Headnotes

Quashing of Proceedings – Section 482 CrPC – Cheque Dishonour Case: Petitioner seeks quashing of complaint No. 321-3 of 2015 and subsequent proceedings under Section 482 CrPC, concerning a dishonoured cheque case under Section 138 of the NI Act. [Para 1, 4-8]

Evidence and Trial Progress – Accusation and Defence: Trial court finds a prima facie case under Section 138 NI Act against the accused. The accused claims trial after not pleading guilty, leading to direction for complainant to adduce evidence. [Para 3.1-3.5]

Non-CTS Cheques – RBI Guidelines and Legal Validity: Examination of RBI guidelines and circulars concerning non-CTS cheques. The court finds that non-CTS cheques were not entirely invalidated at the time of cheque issuance. [Para 9, 13-15, 17-18]

Rejection of Petitioner's Claims – Insufficient Evidence of Cheque Theft: Lack of substantial evidence to support the petitioner's claim of cheque theft, as no FIR or police complaint was filed regarding the alleged theft. [Para 10-11]

Decision – Dismissal of Petition: The court dismisses the petition for quashing of the complaint and proceedings due to insufficient evidence supporting the claims of the petitioner. [Para 19-21]

Referred Cases with Citations

- Not specifically mentioned in the provided text.

Representing Advocates

- Names of the advocates representing the parties are not provided in the provided text.

JUDGMENT

Virender Singh, J. - Petitioner-Abhishek Rao has filed the present petition, under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), with a prayer to quash complaint No. 321-3 of 2015, dated 17th December, 2015, as well as, the proceedings resultant thereto, which are stated to be pending before the Court of learned Additional Chief Judicial Magistrate, Nalagarh, District Solan, H.P. (hereinafter referred to as 'the trial Court').

2. For the sake of convenience, the parties to the present lis are, hereinafter, referred to, in the same manner, as, they were referred to by the learned trial Court.

3. Brief facts, leading to the filing of the present petition, before this Court, may be summed up, as under:

3.1. Complainant-Rakesh Kumar has filed the complaint, under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act'), against accused-Abhishek Rao, qua cheque No. 491938, dated 31st August, 2015. The said cheque is stated to be post-dated cheque. The said cheque, when presented for encashment, was returned back with the observation that the person, who has issued the cheque, was not having sufficient funds, in his account. Thereafter, the complainant had issued statutory notice and after waiting for the statutory period, the complaint has been filed, against the accused.

3.2. The learned trial Court found a case for commission of offence, punishable under Section 138 of the NI Act, against the accused and as such, summoning order was passed on 21st March, 2016. After securing the presence of the accused, the learned trial Court found a prima facie case, punishable under Section 138 of the NI Act, against the accused, as such, notice of accusation was put to him on 20th June 2019.

3.3. When, notice of accusation was put to the accused, he has not pleaded guilty and claimed trial. Consequently, the complainant was directed to adduce the evidence.

3.4. The evidence of the complainant was closed on 6th April, 2022 and the matter was adjourned for 17th May, 2022. On that date, the accused did not appear and application for exemption was considered and allowed. The matter was, thereafter, adjourned for 14th June, 2022. The accused again did not appear on 14th June, 2022, and moved the exemption application, which was allowed for that day and the matter was adjourned for 28th July, 2022.

3.5. On 28th July, 2022, neither the accused appeared before the Court, nor, any application for exemption was moved, on his behalf. As such, his presence was secured by issuing non-bailable warrants. The said non-bailable warrants remained un-executed till the time, the record was requisitioned, by this Court, in the instant petition.

4. By way of the present petition, which has been filed before this Court, on 14th November, 2022, the petitioner, has sought the following reliefs:

'(i) That the Complaint No. 321-3 of 2015 dated 17.12.2015 as well as proceedings thereto pending before the Learned Additional Chief Judicial Magistrate Nalagarh, District Solan, H.P., may kindly be quashed.

(ii) Entire record pertaining to the present case, may please be summoned for the kind perusal of this Hon'ble Court.

(iii) Any other order which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the present case, may be passed, in the interest of law and justice.'

5. The relief has been sought mainly on the ground that the cheque in question is non-CTS cheque and as per the instructions, dated 18th March, 2013, issued by the Reserve Bank of India, the old cheques, i.e. non-CTS

cheques, are not acceptable in any of the nationalized Banks and only CTS cheques are acceptable, after 18th March, 2013. In this regard, he has relied upon the instructions, issued by the Himachal Pradesh State Cooperative Bank Ltd., Head Office, The Mall, Shimla - 171 001, as well as, the circular of the Reserve Bank of India, dated 18th March, 2013.

6. It is the case of the accused (petitioner) that the complainant was working with the accused (petitioner) and he has stolen the old cheque from the office of the accused and presented the same for encashment.

7. It is his further case that the Bank has firstly dishonoured the cheque due to the reason 'drawer signatures differs' and second time, when, the cheque has been presented, the same has been dishonoured for want of 'sufficient funds'.

8. The accused has sought quashing of the complaint against him, mainly on two grounds: firstly, that the complainant had stolen his cheque from his office and presented the same for encashment and secondly, that the cheque in question is non-CTS cheque, as such, the same was not acceptable, in the Bank.

9. The trial of the complaint, pending before the learned trial Court is at the stage of recording the statement of accused, under Section 313 CrPC. At this stage, except the averment with regard to the theft of the cheque, nothing is there on the file, to give an occasion to accept the said bald statement.

10. There is nothing on the record to enable this Court to draw an inference that the accused had ever lodged any complaint against the complainant, with regard to the alleged theft of the cheque in question. The registration of the FIR or complaint to the police would have helped the accused to assert that the cheque in question was stolen, which was a non-CTS cheque and the same has been presented in order to cheat the accused.

11. When, nothing is there on the file, in this regard, then, the said ground cannot be considered to quash the FIR, that too, while exercising the powers, under Section 482 CrPC. Moreover, the accused could probabalize this defence by adducing the evidence, before the learned trial Court, or, by cross-examining the complainant.

12. So far as the another ground, qua the fact that after 18th March, 2013, non-CTS cheques were not acceptable in any of the nationalized Banks in

the entire country, is concerned, the main thrust of the accused, in this regard, is the letter, dated 18th March, 2013, issued by the Reserve Bank of India, which has been addressed to the Chairman and Managing Director/Chief Executive Officer All Scheduled Commercial banks including RRBs/ Urban Co-operative Banks/State Co-operative Banks/ District Central Co-operative Banks/Local Area Banks.

13. In terms of the said letter, instructions were issued by the Reserve Bank of India, under the provisions of Section 18 of the Payment and Settlement Systems Act, 2007. The relevant clauses (c) and (d) of the said letter, are reproduced, as under:

'c. All residual non-CTS-2010 cheques with customers will continue to be valid and accepted in all clearing houses [including the Cheque Truncation System (CTS) centers] for another four months up to July 31, 2013, subject to a review in June 2013.

d. Cheque issuing banks shall make all efforts to withdraw the non-CTS-2010 Standard cheques in circulation before the extended timeline of July 31, 2013 by creating awareness among customers through SMS alerts, letters, display boards in branches/ATMs, logon message in internet banking, notification on the web-site etc.'

14. When, the letter itself contains that the above conditions are subject to review in the month of June, 2013, then, reliance cannot be made solely on this letter.

15. As per the circular issued on 15th March, 2021, by the Reserve Bank of India, the CTS has been made applicable from 1st October, 2021. The relevant portion of the said instructions, is reproduced, as under:

'Extension of Cheque Truncation System (CTS) across all bank branches in the country

Please refer to the Statement on Developmental and Regulatory Policies dated February 5, 2021 wherein Reserve Bank of India (RBI) has announced pan-India coverage of CTS by bringing all branches of banks in the country under image-based CTS clearing mechanism.

2. The CTS is in use since 2010 and presently covers around 1,50,000 branches. All the erstwhile 1219 non-CTS clearing houses (ECCS centres) have been migrated to CTS effective September 2020. It is, however, seen

that there are branches of banks that are outside any formal clearing arrangement and their customers face hardships due to longer time taken and cost involved in collection of cheques presented by them.

3. To leverage the availability of CTS and provide uniform customer experience irrespective of location of her/his bank branch, it has been decided to extend CTS across all bank branches in the country. To facilitate this, banks shall have to ensure that all their branches participate in image-based CTS under respective grids by September 30, 2021. They are free to adopt a model of their choice, like deploying suitable infrastructure in every branch or following a hub & spoke model, etc. and concerned banks shall coordinate with the respective Regional offices of RBI to operationalise this.

4. Banks are advised to inform us (helpdpss@rbi.org.in) the roadmap to achieve pan-India coverage of CTS and submit a status report before April 30, 2021.

5. This directive is issued under Section 10 (2) read with Section 18 of Payment and Settlement Systems Act, 2007 (Act 51 of 2007).'

16. The cheque in question has been issued by the accused from his account, maintained with Punjab National Bank. Even, the Punjab National Bank, vide circular, dated 17th January, 2019, has withdrawn the CTS non-compliant cheques from 1st January, 2019. The relevant portion of the circular, reads, as under:

'Attention of the field functionaries is invited to DBD Circular No. 51/2018 dated 14.08.2018 wherein detailed guidelines in respect of revised schedule for withdrawal of CTS non-complaint cheques in clearing process has been circulated. In para-ii of the said circular it was advised that the separate clearing session for CTS non-compliant cheques will be discontinued after December 31, 2018. Banks can, however, continue to present such instruments in Express Cheque Clearing System (ECCS) centres.

2. Now, it has been decided that as a one-time measure, Bank would proactively provide CTS compliant cheque-books to all those customers who still have only Non-CTS cheques in their accounts. This activity would be taken in a phased manner as mentioned below....'

17. Even, as per this circular, acceptance of non-CTS cheques has not been totally discontinued.

18. The learned counsel appearing for the accused could not point out any circular, which prohibits the acceptance of non-CTS cheques on 31st August, 2011.

19. With these observations, there is no occasion for this Court to allow the instant petition. Consequently, the petition is dismissed, so also the pending miscellaneous applications, if any.

20. The accused, through his counsel, is directed to appear before the learned trial Court on 11th January, 2024, at 10.00 a.m.

21. Send down the record.

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