

**HIGH COURT OF GUJARAT**

**CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

**Date of Decision: 12/02/2024**

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 2774 of 2023

**PARIMAL MAHESHBHAI SOLANKI**

**Versus**

**STATE OF GUJARAT**

**Legislation:**

Section 482 of the Code of Criminal Procedure, 1973

Sections of the Negotiable Instruments Act, 1881 (particularly Section 138)

**Subject:** Petition for quashing orders related to a cheque dishonour case, focusing on the authenticity of the petitioner's signature and writings on the cheque.

**Headnotes:**

Petition for Quashing under Section 482 CrPC – Petitioner seeks quashing of orders from lower courts in a case involving a dishonoured cheque under Section 138 of the Negotiable Instruments Act – Claims misuse of cheque with disputed writings, while admitting his signature. [Para 2, 4]

Factual Background – Complainant alleges petitioner issued a cheque of Rs. 7,00,000 which was dishonoured due to a blocked account – Petitioner asserts the cheque was misused by the complainant, admitting to his signature but disputing the writings on the cheque. [Para 3, 4]

Trial Court and Revisional Court Decisions – Petitioner's application for forensic examination of the cheque dismissed – Both courts concluded the signature on the cheque was not disputed and the petitioner failed to establish a credible defense for the misuse of the cheque. [Para 5, 6, 12]

Legal Presumption under Section 139 of the NI Act – Once the signature on the cheque is admitted, the court must presume the cheque was issued towards a legally enforceable debt, unless contrary is proved – Petitioner's defense focused on the writings, not the signature. [Para 6, 10]

Relevance of Sending Cheque to FSL – Court finds no merit in sending the cheque for forensic examination as the signature, which is crucial, is not disputed by the petitioner – References to the cases of Kalamani Tex vs. P. Balasubramanian and Rajesh Jain vs. Ajay Singh to support the decision. [Para 7, 11]

Distinguishing from Precedents – Court distinguishes the present case from cited precedents (T. Nagappa vs. Y.R Murlidhar and others) where there was a bona fide defense regarding the misuse of the cheque – In the present case, no such credible defense raised. [Para 12]

Dismissal of the Petition – Considering the admitted signature on the cheque and lack of a credible defense regarding the writings, the petition is dismissed – Petitioner had the opportunity to further prove his case but chose not to. [Para 13, 14]

#### **Referred Cases:**

- T. Nagappa vs. Y.R Murlidhar, reported in AIR 2008 SC 2010
- Kalamani Tex and Anr. vs. P. Balasubramanian, reported in (2021) 5 SCC 283
- Rajesh Jain vs. Ajay Singh reported in (2023) 10 SCC 148

- Tedhi Singh vs. Narayan Dass Mahant, reported in (2022) 6 SCC 735
- Oriental Bank of Commerce vs. Prabodh Kumar Tewari, reported in 2022 SCC Online 1089
- Parasa Raja Manikyala Rao And Anr vs State Of A.P reported in AIR 2004 SC 132

**Representing Advocates:**

**MR NIRAV C THAKKAR for the Applicant(s) No. 1**

**KUNAL M DAVE for the Respondent(s) No. 2**

MR TRUPESH KATHIRIYA, APP for the Respondent(s) No. 1

**ORAL ORDER**

1. Heard learned advocates for the respective parties.
2. By way of this petition under Section 482 of the code of Criminal Procedure, 1973, the petitioner seeks to invoke the inherent powers of this Court, praying for quashing of the impugned order dated 21.01.2023 passed by learned Principal District Judge, Valsad, being Criminal Revision Application No.24/2022 as well as order dated 14.10.2022 passed by learned 3<sup>rd</sup> Additional Chief Judicial Magistrate, Valsad, below Exh:36 in Criminal Case No.660/2018.
3. It is the case of the complainant that the complainant and Petitioner were friends and as the Petitioner demanded Rs.7,00,000/- from the complainant, the complainant paid cash of Rs.7,00,000/- on different dates and against the same, on 26.03.2018, the petitioner had given a cheque of Rs.7,00,000/- by saying that as and when the complainant presented the cheque in the bank, the same will be honoured. Thereafter, on 28.03.2018, when the complainant deposited the cheque in his bank i.e. the Valsad Mahila Nagrik Sahakari Bank Ltd, Valsad branch, the same was dishonoured with an endorsement "Account Blocked". In this regard, complaint came to be filed.
4. It is the case of the petitioner that, some black cheques of the petitioner were lying with the complainant and the complainant has misused the cheque. Further, he has admitted his signature made on the cheque in question, but the writing on the cheque was not of the Petitioner. It is thereby case of the Petitioner that he has not issued cheque to the complainant and the writing made on the cheque was not of the Petitioner.

5. From the record, it appears that at the instance of respondent No.2, Criminal Case No.660/2018 is filed under the provisions of Negotiable Instruments Act, which is pending before the Court of learned Magistrate, Valsad, wherein application below Exh:36 filed by the petitioner seeking sending cheque to FSL for examination of writings and ink made on it came to be rejected vide order dated 14.10.2022.
6. Having heard learned counsel for the parties and perusing the material placed on record, it appears that application filed below Exh:36 came to be dismissed and observed that though the notice served to the Petitioner, he has not filed any complaint about the misuse of his cheque and has failed to disclose on which date and time, the cheque was given by the petitioner to the complainant. Even he has not replied to the notice issued by the complainant. Being aggrieved by the same, the petitioner preferred Criminal Revision Application No.24/2022, which also came to be dismissed by assigning reasons, more particularly, on the ground that the petitioner has not disputed the signature over the cheque. Proceedings are going on under Section 138 of the Act. The petitioner has filed an application to send the cheque to FSL. It is needless to say that definitions of cheque is defined in Section 6 of the Negotiable Instruments Act. Here signature of cheque is not in dispute. Proceedings under Section 138 qua dishonor of cheque. Even cognizance of the offence is not disputed. Learned advocate has mainly relied on the judgment delivered in the case of **T. Nagappa Vs. Y.R Murlidhar**, reported in **AIR 2008 Sc 2010** to buttress his argument and submitted that, if the documents are not sent to FSL, which amounts to denial of fair trial and examination of determination of the case to send documents to FSL is required. Cheque is required to be sent to FSL, but how it is relevant and for what reason, it is relevant to decide the said issue. Even the cheque itself is produced on record as an evidence and even in cross-examination also, no specific defense has been put forward by the Petitioner. Even in the cheque, signature is admitted. So far provisions of Section 20 is concerned, which provides authorization to the holder to complete inchoate instrument once the person signatures and delivers to another. Here the signature on the cheque or leaf of the cheque is not disputed.
7. Considering the aforesaid, once the signature on the cheque is admitted, question does not arise to send it for further examination to FSL. In the case on hand, once the signature is admitted, as per the law laid down in the case of **Kalamani Tex and Anr. Vs. P. Balasubramanian**, reported in **(2021) 5 SCC 283**, the Court shall have to presume about legally enforceable debt under Section 139 of the Act. The Hon'ble Apex Court in case of **Rajesh Jain**

- Vs. Ajay Singh** reported in **(2023) 10 SCC 148**, held that as per Section 139 of the Act, the word “until the contrary is proved”, do not mean that the accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability, rather the accused has the option to ask the court to consider the nonexistence of debt so probable that a prudent man ought under the circumstances of the case, to act upon the supposition that debt did not exist.
8. It is needless to say that criminal cases are required to be decided on its facts and merits. In this regard, reference is required to be made in the case of The Hon'ble Apex Court in the case of **Parasa Raja Manikyala Rao And Anr vs State Of A.P reported in AIR 2004 SC 132**, wherein, Hon'ble Apex Court held as under:  
*“...Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”*
  9. Further, it is argued that during the cross-examination by the respondent No.2, he has admitted the signature of the petitioner on the document in his presence and he has no objection if the said document is send for handwriting expert. Hence, the complaint is not maintainable under Section 138 of the Negotiable Instruments Act (referred to as the "NI Act"), 1881.
  10. Having gone through the documents on record, it appears that the applicant/petitioner has admitted his signature on the cheque. This implies that he has admitted his signature on the cheque and has only raised dispute of writings made on it. Hence, in view of the law laid down by the Hon'ble Apex Court in the case of **Tedhi Singh v. Narayan Dass Mahant**, reported in **(2022) 6 SCC 735** and **Kalamani Tex v. P. Balasubramanian**, reported in **(2021) 5 SCC 283**, the effect of admission regarding the signature on the cheque is explained. Once the signature is admitted, it is required to be presumed that the cheque was issued towards consideration for a legally enforceable debt. As per explanation of legal position on how to rebuts the presumption under Section 139 NI Act and to raise presumption under Section 139 of the NI Act, the Hon'ble Apex Court has clearly explained in the case of **Rajesh Jain v. Ajay Singh** reported in **(2023) 10 SCC 148**.
  11. Even in cross-examination, the accused has put suggestion, wherein also, it is admitted that in presence of the complainant, accused has put his signatures on the cheque. Considering the aforesaid facts, suggestion

becomes an evidence and even otherwise, signature on the cheque is not disputed. Even Section 20 of the NI Act gives permission to fill up the documents by a holder.

In this regard, reference is required to be made in the case of **Oriental Bank of Commerce Vs. Prabodh Kumar Tewari**, reported in **2022 SCC Online 1089**. The Hon'ble Apex Court held as under:-

*“18. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability.”*

12. Even no such dispute is raised by the petitioner and learned Trial Court as well as Revisional Court came to the conclusion that with a view to protract the litigation at the fag-end, such defense has been raised by the accused. Learned advocate has relied on the judgments rendered in cases of (i) **T. Nagappa Vs. Y.R.Murlidhar**, reported in **AIR 2008 SC 2010** and (ii) **Special Criminal Application No.11178 of 2021**. Prior to deal with the aforesaid authorities, it is worth to mention that Criminal Case is required to be decided on its own merit, rather relied on the precedent, wherein, it was the case of the accused that the cheque was obtained by his partner Amratbhai Gopalbhai Patel, who was in the business of lending money. It was the specific case of the accused that cheque was given to his Ex-partner and thus, the cheque was not for any existing debt or liability. In that case, the cheque issued towards the security in the year 2011 and ex-partner had misused the cheque though there was specific defense qua misuse of cheque and there was bonafide and probable defense of the accused. Even in the case of Shashikant Shamaldas Patel (SCR.A No.11178/2021), cheque was fabricated and it was not issued towards any legal debt or liability. Even the accused had also filed a complaint against the complainant under Sections 406, 420, 506(2) and 114 of Indian Penal Code, 1860 and thereafter, chapter case also filed against the complainant and other witnesses. Further, as the cheque was misused in collusion with one Amratbhai Patel and the complainant, application came to be allowed. Here in the case on hand, no bonafide and probable defense has been raised.
13. In view of the aforesaid facts, it prima facie reveals that in the present case, no such defense put forward or raised by the accused. Though it is worth to mention that the petitioner has not disputed his signature on the cheque, but he wants to prove that he has not made any writings on cheque, or otherwise, his signature is not genuine, then, it is open for the Petitioner accused that he could have procured certified copy of the specimen signature from the bank

and request could have been made to summon the concerned bank official in defense for giving an evidence regarding genuineness, or otherwise, signature on the cheque, but with a view to protract the litigation, present petition is being filed.

14. For the foregoing reasons and observations, present application stands dismissed. No order as to costs.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.