

**HIGH COURT OF RAJASTHAN****BENCH: Hon'ble Mr. Justice Anil Kumar Upman****Date of Decision: 3<sup>rd</sup> May 2024**

S.B. Criminal Miscellaneous (Petition) Nos. 2216/2018, 2220/2018, 2221/2018, 2224/2018

**Shaliwahan Singh Rathore, Ravi Pratap Singh, Nishant Gupta, Nirbhay Pandey** .....Petitioners

**Versus**

**State of Rajasthan, M/s Vibrant Academy (I) Pvt. Ltd.**  
....Respondents

**Legislation:**

Section 138 of the Negotiable Instruments Act, 1881

**Subject:** Petitions for quashing criminal proceedings under Section 138 of the Negotiable Instruments Act, related to cheques issued as security in employment contracts with the respondent academy.

**Headnotes:**

Criminal Law – Dishonor of Cheque – Cheques issued as security under employment contracts – Petitioners sought quashing of criminal proceedings under Section 138 of the Negotiable Instruments Act, arguing no subsisting legal debt or liability at the time of the cheque issuance – High Court held proceedings should continue as the question of the validity of contracts and enforceability of debt on the date of cheque presentation to be determined at trial – Petitions dismissed. [Paras 1-22]

Contract Law – Security Cheques and Legally Enforceable Liabilities – Analysis focused on whether the cheques issued as security without a specific date could establish a legally enforceable debt under Section 138 when no such debt existed at the time of contract formation. The court

referenced Supreme Court judgments clarifying the need for a legally enforceable debt or liability at the time of the cheque's presentation, not just at issuance, to sustain a criminal complaint under Section 138 [Paras 10-19].

Judicial Procedure – Role of Trial Court in Determining Contract Validity and Enforcement – The High Court emphasized that the validity of contracts and the existence of enforceable liabilities should be adjudicated at the trial level where evidence can be fully examined. The decision highlighted the trial court's responsibility to assess whether the terms of the employment contracts and the subsequent issuance and dishonour of cheques constituted a breach under the stipulated conditions [Paras 11-12, 20].

Decision – Dismissal of Petitions to Quash Proceedings – The High Court dismissed the petitions, ruling that issues concerning the enforcement of contracts and the applicability of Section 138 N.I. Act are matters for trial consideration. The court instructed the trial court to expedite proceedings given the long duration since the filing of the original complaints [Paras 21-22].

#### **Referred Cases:**

- Indus Airways Pvt. Ltd. & Ors. Vs Magnum Aviation Pvt. Ltd. & Anr., 2014 Cr.L.R. (SC) 387
- I.C.D.S. Ltd. Vs Beena Shabeer, 2002 (2) SCC 426
- Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr., 2022 LiveLaw (SC) 830
- M/s Shree Daneshwari Traders vs Sanjay Jain & Anr., (2019) 16 SCC 83

Representing Advocates:

For Petitioners: Shri Dushyant Singh Naruka

For Respondents: Ms. Harshita Sharma and Ms. Vibhu Sakshi Sharma

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#### **J U D G M E N T**

**DATE OF PRONOUNCEMENT : 03/05/2024**

**(Reportable)**

1. These misc. petitions have been filed by respective petitioners for quashing of the entire criminal proceedings of the complaint cases (details whereof are mentioned hereinbelow) for offence under Section 138 of the N.I. Act., filed by respondent

No.2 i.e., M/s Vibrant Academy against them:-

S.No.	Complaint Case No.	Party Name	Other details
1.	891/2017	Vibrant Academy (I) Pvt. Ltd. vs Shaliwahan Singh Rathore	pending trial before learned Special Judicial Magistrate N.I. Act Cases NO.3, Kota, Rajasthan
2	20682/2017	Vibrant Academy (I) Pvt. Ltd. vs Ravi Pratap Singh	pending trial before learned Special Judicial Magistrate N.I. Act Cases No.3, Kota, Rajasthan
3.	16289/2017	Vibrant Academy (I) Pvt. Ltd. vs Nishant Gupta	pending trial before learned Special Judicial Magistrate N.I. Act Cases No.3, Kota, Rajasthan
4.	20609/2017	Vibrant Academy (I) Pvt. Ltd. vs Nirbhay	pending trial before learned Special

		Pandey	Judicial Magistrate N.I. Act Cases No.3, Kota, Rajasthan
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2. Since common question of law has been involved in all these misc. petitions and all the aforementioned criminal complaint cases have been filed by one and common complainant alleging similar and identical allegations in the same court i.e. learned Special Judicial Magistrate, N.I. Act Cases No.3, Kota, Rajasthan, all these four misc. petitions are heard and decided together by this common judgment.

1. The background of these misc. petition in a nutshell is that the complainant-respondent M/s Vibrant Academy (I) Pvt. Ltd. is running a IIT JEE Coaching Institute. The respondent-company invited petitioners herein to enter into contract for their employment as faculty upon certain terms and conditions. The complainant respondent obtained cheques in question (mentioned below) from the respective petitioners in order to indemnify itself for any future losses which could have incurred to it by violation of any condition of the contract by the petitioners:-

Sr. No.	Drawer (petitioner) of the Cheque	Cheque Number and other details
1.	Shaliwahan	Cheque No.976147 dated 22.06.2017 for a sum of Rs.6,00,000/- of State Bank of Bikaner and Jaipur, Instrumentation Township Branch Kota
2.	Ravi Pratap Singh	Cheque No.839169 dated 22.06.2017 for a sum of Rs.28,50,000/- of State Bank of Bikaner and Jaipur, Instrumentation Township Branch Kota

3.	Nishant Gupta	Cheque No.891853 dated 22.06.2017 for a sum of Rs.41,50,000/- of State Bank of Bikaner and Jaipur, Instrumentation Township Branch Kota
4.	Nirbhay Pandey	Cheque No.525401 dated 22.06.2017 for a sum of Rs.34,50,000/- of State Bank of Bikaner and Jaipur, Instrumentation Township Branch Kota

2. The cheques in questions were issued by the respective petitioners to the complainant as security and dates were not mentioned therein at that time. It was agreed between the parties that the complainant-respondent would be free to present the cheques for encashment in case of breach of any of the terms of the agreement and the petitioners would be bound to honour the cheques on presentation. Thereafter, the petitioners resigned their jobs and for breach of condition of the contract, the complainant issued multiple legal notices (both civil and criminal) to the petitioners for breach of the conditions of the contract. The petitioners filed separate reply to the notices mentioning therein their grievances/defence, and when the cheques in question could not be honoured, the respondent company filed separate cases under Section 138 of the N.I Act against the petitioners before learned Special Judicial Magistrate, N.I. Act Cases, No.3, Kota. Cognizance has been taken by the learned trial court against the petitioners for offence under Section 138 of the N.I. Act and proceedings are going on there. Hence, the petitioners have filed these misc. petitions seeking quashing of the entire criminal proceedings of the complaint cases, pending against them before the learned trial court.
3. Shri Dushyant Singh Naruka, learned counsel representing the petitioners, vehemently and fervently submits that entire criminal proceedings of the complaint cases, pending against the petitioners before the learned trial court are liable to be quashed and set aside as it is an admitted case of the complainant company itself that there was no legal debt or other liability existing on the date when the contract came into existence between the complainant and the petitioners. The cheques in question were drawn on the

same date i.e. date of contract in favour of the complainant but these are undated. It is argued that the contract through which the liability arose is a non-competent and vague contract and the cheques were drawn merely as indemnity bond to secure any future losses which may or may not occur in future. It is also argued that the interpretation of the expression 'for discharge of any debt or other liability' occurring in Section 138 of the N.I. Act is significant and decisive of the matter. This expression means a legally enforceable debt or other liability. It leaves no manner of doubt that to attract an offence under Section 138 of the N.I. Act, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. But as there was no legal enforceable debt on the date when the cheques in question were drawn, the proceedings under Section 138 N.I. Act against the petitioners would not be maintainable and are liable to be quashed. He has placed reliance on the Supreme Court judgment in the case of **Indus Airways Pvt. Ltd. & Ors. vs Magnum Aviation Pvt. Ltd. & Anr.** reported in **2014 Cr.L.R. (SC) 387**. He draws attention of this Court towards the following observations made in **Indus Airways** (supra):-

"19. The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the N.I. Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the N.I. Act. The Delhi High Court has traveled beyond the scope of Section 138 of the N.I. Act by holding that the purpose of enacting Section 138 of the N.I. Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or

goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability."

4. With these submissions, learned counsel for the petitioners has prayed that the misc. petitions may be accepted and entire proceedings of the cases, pending against the petitioners, before the trial court may be quashed.
5. Per contra, Ms. Harshita Sharma and Ms. Vibhu Sakshi Sharma, learned counsel representing the respondent complainant oppose the submissions of the petitioners' counsel. It is contended by them that the learned trial court, on the basis of the material available on record, after due application of mind, has taken cognizance for offence under Section 138 of the N.I. Act, against the petitioners and that there is no illegality in the orders taking cognizance. Since, the petitioners failed to pay the amount of the cheques in question within the stipulated time period, proceedings under the N.I. Act have been initiated against them. It is contended that when the cheques were issued and the signatures thereon were admitted, the presumption of a legally enforceable debt would arise in favour of the holder of the cheque. If the signatures have been admitted by the drawer of the cheque, then, the argument with regard to non-bearing of date on cheque or cheque being undated at the time of its drawal/issuance, would be of no avail to the opposite party. They contend that a post-dated cheque is deemed to have been drawn on the date it bears and only the date which the cheque bears is the relevant date and on that date, it would assume the character of "cheque".
6. Learned counsel for the respondent rely upon the Supreme Court judgment in the case of **I.C.D.S. Ltd. vs Beena Shabeer : 2002 (2) SCC 426**. They submit that in **Beena Shabeer** (supra), the Hon'ble Supreme Court held that security cheques would fall within the purview of Section 138 N.I. Act, and a person cannot escape his liability. When there is an existing liability on the date of presentation of the cheque, and the "security cheques" issued are dishonoured, the accused will be liable under Section 138 N.I. Act. They submit that the above-quoted observations in **Indus Airways** (supra) are *obiter dicta*, as they were not necessary for a decision of the case under consideration. The earlier decision in **Beena Shabeer** (supra) was not brought to the notice of the Hon'ble Supreme Court. Reliance has also been placed on the following Supreme Court judgments:-

- (i). Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr. reported in 2022 LiveLaw (SC) 830; and
- (ii). M/s Shree Daneshwari Traders vs Sanjay Jain & Anr. reported in (2019) 16 SCC 83.

Learned counsel thus, crave dismissal of the misc. petitions.

9. I have heard and considered the arguments advanced at bar and have gone through the material available on record.

10. The issuance of the cheques in question under the signatures of the petitioners to the complainant company is not in dispute at all. It is also not in dispute that when the cheques in question were given to the complainant, dates were not mentioned therein and they were given as security purpose. The core argument, upon which, learned counsel for the petitioners is trying to set up his case is that since there was no legally enforceable debt or other liability at the time of drawal/issuance of the cheques, the provisions of Section 138 of the N.I. Act would not attract.

11. The petitioners with open eyes entered into contract with the complainant company for their employment upon certain terms and conditions and in pursuance of the contract entered between the parties, duly signed undated cheques, were given by the petitioners to the Company and when the petitioners breached the terms of the contract, the cheques in question were presented by the respondent-complainant and upon their dishonour, proceedings under Section 138 of the N.I. Act. were initiated against them by the respondent Company. The petitioners ought to have opposed and challenged the said contract at its very initial stage, if they were having any suspicion or doubt with respect to its terms and conditions. However, the petitioners have themselves accepted the contract.

12. Be that as it may. Whether or not the contract/s entered into between the petitioners and the respondent company is a valid contract or not and whether it gives rise to liability on breach of condition of the contract, cannot be adjudicated at this stage and needs to be examined and evaluated before the trial court as while exercising powers under Section 482 Cr.P.C., appreciation of evidence is not desirable. Thus, this Court is not inclined to make any observation on this aspect of the matter. I fortify this view from the judgment passed by Hon'ble Supreme Court in the case of **Rathish Babu Unnikrishnan v. State (NCT of Delhi), 2022 SCC OnLine SC 513**, wherein it was held as under:-



"...In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence."

13. It is not disputed by both the parties that at the time of drawal of the cheques, there was no debt or liability subsisting. The cheques in question (undated) were given as security and as per the case of the complainant, on breach of the conditions of the contract, they were presented for encashment. In **Salar Solvent Extractions Ltd. v. South India Viscose Ltd. : (1994) 3 Crimes 295 (Mad)**., it has been held that only the dates which the cheques bear are the relevant dates. A post dated cheque is deemed to have been drawn on the date it bears.

14. I have also carefully gone through the judgment cited by learned counsel for the petitioners. In my considered opinion, the facts and circumstances of the **Indus Airways Pvt. Ltd.** (supra) is totally different to the facts and circumstances of the present case. In the said case, the cheques were issued by way of advance payment for the purchase orders. One of the terms and conditions of the contract therein was that the entire payment would be given to the supplier in advance as it had to procure the parts from abroad. In the said case, the purchaser cancelled the purchase order and requested to supplier to return both the cheques. However, the cheques got dishonoured when they were presented on the ground that the purchaser had stopped payment. Thus, while dealing with such situation, Hon'ble Apex Court held that for a criminal liability to be made out, under Section 138 of the N.I. Act, there should be legally enforceable debt subsisting on the date of drawal of the cheque. But in the instant case, the facts are totally different and the observations of Hon'ble Supreme Court have to be viewed in the light of the background facts of the case.

15. The Hon'ble Apex Court, in the case of **Dashrathbhai Trikambhai Patel** (supra), after taking into consideration the aforesaid view passed in the case of **Indus Airways** (supra) has held that for the commission of any offence under Section 138 of N.I. Act, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

The relevant observations are reproduced hereinbelow for the sake of ready-reference:-

"14. The judgments from *Indus Airways (supra)* to *Sunil Todi (supra)* indicate that much of the analysis on whether postdated cheques issued as security would fall within the purview of Section 138 of the Act hinges on the relevance of time. In *Indus Airways (supra)*, this Court held that for the commission of the offence under Section 138, there must have been a debt on the date of issuance of the cheque. However, later judgments adopt a more nuanced position while discussing the validity of proceedings under Section 138 on the dishonour of post-dated cheques. This Court since *Sampelly Satyanarayana Rao (supra)* has consistently held that there must be a legally enforceable debt on the date mentioned in the cheque, which is the date of maturity.

15. This Court in *NEPC Micon Ltd. v. Magna Leasing Ltd.*<sup>6</sup> held that the Courts must interpret Section 138 with reference to the legislative intent to suppress the mischief and advance the remedy. The objective of the Act in general and Section 138 specifically is to enhance the acceptability of cheques and to inculcate faith in the efficacy of negotiable instruments for the transaction of business. <sup>7</sup> Section 138 criminalises the dishonour of cheques. This is in addition to the civil remedy that is available. Through the criminalisation of the dishonour of cheques, the legislature intended to prevent dishonesty on the part of the drawer of a negotiable instrument.<sup>8</sup> The interpretation of Section 138 must not permit dishonesty of the drawee of the cheque as well. A cheque is issued as security to provide the drawee of the cheque with a leverage of using the cheque in case the drawer fails to pay the debt in the future. Therefore, cheques are issued and received as security with the contemplation that a part or the full sum that is addressed in the cheque may be paid before the cheque is encashed.

16. The judgments of this Court on post-dated cheques when read with the purpose of Section 138 indicate that an offence under the provision arises if the cheque represents a legally enforceable debt on the date of maturity. The offence under Section 138 is tipped by the dishonour of the cheque when it is sought to be encashed. Though a post-dated cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent a legally enforceable debt at the time of encashment. If there has been a material change in the circumstance such that the sum in the cheque does not represent a legally enforceable debt

at the time of maturity or encashment, then the offence under Section 138 is not made out."

16. A cheque is a monetary instrument. In several cases, it gets dishonoured or bounced. This happens when the amount mentioned in the cheque is greater than the amount available in the account from which the cheque has been drawn of. Section-138 of the Negotiable Instruments Act aims to lay down legal consequences of a case where a cheque gets dishonoured. It essentially provides a shield to the payees and protects their rights. Section-138 not only imposes criminal liability against the payee but also provides for a civil suit which the payee can initiate against the drawer.

17. A post-dated cheque is an instrument in which a future date is written implying that the cheque could only be encashed on or beyond that future date. Two important dates in cases of dishonoured cheques are the date of issuance of cheque and the date of maturity of cheque. Usually the debt or the liability existing on both the dates is of the same amount. But in some instances a part payment is made between the two date, which in turn reduces the amount liable on the date of maturity. Regarding this, the issue whether the offence of section-138 of Negotiable Instruments Act is made out from liability/debt existing on date of issuance of cheque or date of maturity comes up. The Hon'ble Apex Court, in case **Dashrathbhai Trikambhai Patel** (supra) decided that as to when Section-138 will be attracted in cases of part-payment made after the cheque was issued but before the cheque was encashed. The Court held that such a payment must be endorsed on the cheque under Section 56. The Apex Court in the above-mentioned judgment observed many previous Supreme Court judgments to decide the instant case including **Indus Airways Private Limited** (supra). In later judgment, the Apex Court delved deeper into this issue and considered that in cases of part payment, it is unjust to consider the date of issuance of cheque for the purposes of Section-138 as the amount liable on the date of issuance will be more than the amount liable on the date of encashment of the cheque. This is unjust to the drawer who made a part payment already by some other means. Hence the court considered this submission and held that the date of maturity of the cheque should be considered to decide on the debt occurring under Section-138.

18. In case of **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited** reported in **(2016) 10 SCC 458**, it

was held that the test for the application of Section 138 is whether there was a legally enforceable debt on the date mentioned in the cheque. It was held that if the answer is in the affirmative, then the provisions of Section 138 would be attracted.

19. The Hon'ble Supreme Court has not only taken Principles of Natural Justice to determine these issues, but also considered legislative intent of The Negotiable Instruments Act, especially in the light of Section-138. In the cases of **NEPC Micon Ltd. v. Magna Leasing Ltd AIR 1995 SC 1952**, and **Sunil Todi v. State of Gujarat, Criminal Appeal No. 1446 of 2021** the courts held that in order to suppress the wrongdoing and advance the remedy, they must read Section 138 in light of the legislative intent. The Act's overarching goal, as articulated in Section 138, is to increase the acceptance of cheques and foster confidence in the usefulness of negotiable instruments for doing business. To understand more on the issue of legislative intent, the latter case is of utmost importance. In the case of **Sunil Todi**, a two-judge bench expounded on the phrase "debt or other liability" in Section- 138 to understand the true intention of legislation. In previous cases it was held that the word "debt" only includes the amount owed by the drawer to the payee on the date of issuance of the cheque. But it is pertinent to note that "other liabilities" is a separate phrase within the section, and it has to distinguished from the word "debt". And hence the liability arising on the date of maturity will be covered under Section-138.

20. In wake of the aforesaid discussion, I am of the considered opinion that the petitioners cannot shirk their liability to pay the cheque amount to the complainant by taking plea that there was no legally enforceable debt or liability subsisting on the date of issuance/drawl. The relevant date for determining the existence of a legally enforceable debt or liability under the N.I. Act would be the date of presentation/maturity of the cheque in question. If there subsists any legally enforceable debt or liability on the date of presentation of cheque; the cheque gets dishonoured and the drawer fails to make payment of the cheque amount within the stipulated time period, after serving legal notice, the drawer of the cheque in question has to face trial under the N.I. Act. However, the accused petitioners would be at liberty to cross-examine the complainant and adduce other evidence during trial to rebut the presumption of legally enforceable debt or liability subsisting on the date of presentation of cheques in question for encashment; disprove the validity of the contract and produce any other material, favouring their cases.

21. Further, looking to the fact that the aforementioned cases were filed before the learned trial in the year 2017 and till date, nearly seven years have been passed, the trial court is directed to expedite the proceedings.

22. With the aforesaid observations, the misc. petitions fail and are dismissed. Stay applications are also disposed of.

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