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HIGH COURT OF JUDICATURE AT ALLAHABAD

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AFR

Judgement Reserved on 13.02.2024

Judgement Delivered on 26.2.2024

Neutral Citation 2024:AHC:32832

Court No. - 93

Case :- APPLICATION U/S 482 No. - 2965 of 2021

Applicant :- Jatan Kumar Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Sanjay Kr. Srivastava,Anurag Vajpeyi,Praveen Kumar Singh

Counsel for Opposite Party :- G.A.,Kripa Shankar Singh,Rajesh Pratap Singh,Vibhu Rai

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Manish Tiwari, learned Senior Counsel assisted by Sri Praveen Kumar Singh for the applicant, Sri Rajesh Pratap Singh, learned counsel for the opposite party no.2 and Sri Kamleshwar Singh, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning/cognizance order dated 19.10.2020 in Complaint Case No.14988 of 2020 (Satyadev Jayswal vs. Jatan Kumar Singh) under Section 138 of the Negotiable Instruments Act (hereinafter referred as *'the N.I.Act'*), P.S.- Cantt, District- Varanasi, pending in the court of learned Additional Chief Judicial Magistrate, Court No.3, Varanasi.

3. The facts of the case, in brief, are that the aforesaid FIR has been lodged by the opposite party no. 2 with the allegation that he was having commercial relations with the applicant herein and in relation to the business the applicant has issued cheque in his favour for an amount of Rs.29,07,254/- drawn on ICICI Bank

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Branch Pahadiya District Varanasi dated 21.5.2020. It is also alleged that on presenting the cheque in question on 15.6.2020 before the Bank concerned it has been returned on 17.6.2020 with the remark that "Kindly contact Drawer/Drawee Bank. It is also alleged that on the assurance of the applicant again the cheque was presented to the Bank on 19.6.2020 but it was returned by the Bank on 20.6.2020 with the remark "Account Closed". It is further alleged that the demand notice dated 23.6.2020 was issued to the applicant which was received by him on 26.6.2020 but he failed to pay the cheque amount. Therefore, the instant complaint has been filed by the opposite party no. 2 against the applicant under section 138 N.I. Act.

4. Learned Senior Counsel for the applicant submits that in the instant case cheque has been dishonoured by the Bank with the remark "*Account Closed"*. Learned Senior Counsel submits that the dishonour of cheque for the reason Account closed is not covered within the two conditions laid down in Section 138 of the N.I. Act i.e., f*irstly*, the amount of money standing to the credit of the account is insufficient to honour the cheque and s*econdly*, it exceeds the amount arranged to be paid from the account by an agreement made with the Bank. Learned Senior Counsel submits that since the cheque has not been dishonoured for the aforesaid two reasons, therefore, the complaint under Section 138 of the N.I. Act, is not maintainable.

5. Learned Senior Counsel for the applicant has further raised two contrary submissions, f*irstly*, the cheque was issued during the course of business and not for the discharge in whole or in part of any debt or liability and *secondly* the said cheques have been stolen or lost.

6. *Per contra*, learned counsel for the opposite party no.2 submits that after issuing the cheque it was the duty of the drawer of the

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cheque to maintain the said account and make the arrangements for honor of the cheque. If the drawer of the cheque fails to maintain that account and fails to maintain the sufficient funds with the Bank to honour the cheque, the offence under Section 138 of the N.I. Act, is made out. Learned counsel for the opposite party no.2 has relied upon the judgement of the Apex Court in ***NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253***. So far as the contention of the learned counsel for the applicant to the effect that the said cheque was issued during the course of business and not for discharge of any liability, learned counsel for the opposite party no. 2 submits that in view of the presumption under Section 139 of the N.I. Act, once the cheque has been issued by the drawer, it shall be presumed that the same has been issued for discharge of a legally enforceable debt or liability. So far as the contentions that the cheque was stolen is concerned, the same is the defence of the applicant, which has to be established during trial of the case and that cannot be considered while exercising the powers under Section 482 Cr.P.C. with regard to the quashing of the complaint case under Section 138 of the N.I. Act.

7. Learned A.G.A. for the State also supports the submissions made by learned counsel for the opposite party no.2 and further submits that if such a proposition as has been argued by learned Senior Counsel is upheld, then, every drawer of the cheque after issuing the cheque will close the account and escape the liability under Section 138 of the N.I.Act. Therefore, such a proposition cannot be sustained, as the same will frustrate the object of the aforesaid provisions.

8. To appreciate the submissions made by learned counsels for the parties, it will be relevant to note the provisions of Sections 138, 139 & 140 of the N.I. Act, which are as under : -

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*"**Section 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 provision of this Act, be punished with imprisonment for 2[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, 3[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.

Section 139. Presumption in favour of hold-It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*

Section 140. Defence which may not be allowed in any prosecution under section 138. -It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section "*

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9. From perusal of Section 138 of the N.I. Act, the formal conditions required to be fulfilled to constitute the offence under Section 138 of the N.I. Act are as under:-

> (i) that the drawer of the cheque has issued a cheque on an account maintained by him with a banker.
>
> ii) the said cheque is issued for the discharge in whole or in part, of any debt or other liability.
>
> iii) the said cheque is returned by the Bank unpaid,
>
> for the reasons:
>
> (a) the amount of money standing to the credit of that account is insufficient to honour the cheque; or
>
> (b) it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

10. The proviso to said Section further provides that the said cheque has to be presented within a period of six months or within the period of its validity whichever is earlier and after the dishonour of such cheque, the payee or holder in due course of the cheque as the case may be, makes a demand for the payment of said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of intimation by him from the Bank regarding the return of the cheque as unpaid. It further provides that further on receipt of such notice, the drawer of said cheque fails to make the payment of the cheque amount within 15 days of the receipt of the said notice.

11. Section 139 of the N.I. Act provides that it shall be presumed that the holder of the cheque received the said cheque for the discharge in whole or in part of any debt or other liability.

12. Section 140 of the N.I. Act prohibits the drawer of the cheque to raise a defence that he had no reason to believe that when he

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has issued the cheque, the cheque may be dishonoured on presentation before the Bank.

13. So far as the first issue with regard to the dishonour of a cheque by the Bank with the remark *"Account Closed"*, is covered within the parameters of twin conditions provided under Section 138 of the N.I. Act i.e., the amount of money standing to the credit of the account is insufficient to honour the cheque; or *secondly,* it exceeds the amount arranged to be paid from the account by an agreement made with the Bank, it is settled position of law with regard to interpretation of an statute that its provisions has to be interpreted in consonance with the object of the statute. The object of the provisions of Section 138 of N.I. Act is to make the cheque acceptable as effective mode of transactions and any default thereof has to be viewed very seriously. If any literal meaning of the words used in the statute is not in consonance with the object of the statute, particularly, the criminal statute, the interpretation of such words should be given by the court so as it fulfils the purpose and object of the statute.

14. Fundamental rule of interpretation of statute that it has to be the interpretation of particular provision of statute has to be done in consonance with the object of the said statue. The Apex Court in case of ***Kanwar Singh vs. Delhi Administration , (1965) 1 SCR 7*** has held as under:

> *"It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute would defeat the object of the legislature, which is to suppress a mischief the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief."*

15. Further, in the ***State of Tamil Nadu vs. M.K. Kandaswami, (1975) 4 SCC 745,*** the Apex Court has observed that in

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interpreting such a provision, a construction which would defeat its purpose and in effect, obliterate it from the statute book should be eschewed; if more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile.

16. The issue whether the remark *"Account Closed"* is covered within the aforesaid twin conditions of Section 138 of N.I. Act, has been dealt with in the judgement of the Apex Court in ***NEPC Micon Ltd.(supra),*** wherein the Apex Court has held as under: -

> *"**7.** Further, the offence will be complete only when the conditions in provisos (a), (b) and (c) are complied with. Hence, the question is, in a case where a cheque is returned by the bank unpaid on the ground that the "account is closed", would it mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque"? **In our view, the answer would obviously be in the affirmative because the cheque is dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money standing to the credit of that account is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is a specie.** After issuing the cheque drawn on an account maintained, a person, if he closes "that account" apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138 as there was insufficient or no fund to honour the cheque in "that account". Further, the cheque is to be drawn by a person for payment of any amount of money due to him "on an account maintained by him" with a banker and only on "that account" the cheque should be drawn. This would be clear by reading the section along with provisos (a), (b) and (c).*
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> ***8.** Secondly, proviso (c) gives an opportunity to the drawer of the cheque to pay the amount within 15 days*

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> *of the receipt of the notice as contemplated in proviso (b). Further, Section 140 provides that it shall not be a defence in prosecution for an offence under Section 138 that the drawer has no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.* ***Dishonouring the cheque on the ground that the account is closed is the consequence of the act of the drawer rendering his account to a cipher. Hence, reading Sections 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that the account is closed would be covered by the phrase "the amount of money standing to the credit of that account is insufficient to honour the cheque".***
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> ***9.*** *Learned counsel for the appellants, however, submitted that Section 138 being a penal provision, it should be strictly interpreted and if there is any omission by the legislature, a wider meaning should not be given to the words than what is used in the section.* ***In our view even with regard to penal provision, any interpretation, which withdraws the life and blood of the provision and makes it ineffective and a dead letter should be averted.*** *If the interpretation, which is sought for, were given, then it would only encourage dishonest persons to issue cheques and before presentation of the cheque close "that account" and thereby escape from the penal consequences of Section 138."*

17. Similarly, in ***Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249***, the Apex Court has held that if the cheque is dishonoured because of the stop payment instructions to the Bank, the provision under Section 138 of the N.I. Act, would get attracted and would amount to dishonour of cheque within the meaning of Section 138 of the N.I. Act. It was further held that if the cheques were dishonoured for the reasons ((i) referred to the drawer; (ii) instructions for stoppage of payment and stamped; and (iii) exceeds agreement, all those held to be covered within the meaning of Section 138 of the N.I. Act, as dishonour of cheque.

18. Thus, From the aforesaid judgements, it is crystal clear that when a cheque is returned unpaid by a Bank with an endorsement

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"*Account Closed"*, it would amount to returning the cheque unpaid because the amount standing to the credit of such account is insufficient to honour the cheque as envisaged in Section 138 of the N.I. Act. The return of the cheque by the drawee Bank alone constitutes the commission of offence under section 138 of the N.I. Act.

19. The other contentions raised by the applicant that the said cheque was issued during the course of business and not for discharge, in whole or in part, of any debt or liability is concerned, the applicant has relied upon the judgement of the Madras High Court in the case of ***K. Kumar vs. M/s Bapsons Foot Wear, Criminal Misc. Petition No. 4801 of 1990***.

20. In the considered opinion of this Court, the said judgement, has been passed by the Madras High Court in ignorance of presumption provided under Section 139 of the N.I. Act and in view of the presumption under Section 139 of the N.I. Act, it will be presumed that the said cheque was issued in discharge of a legally enforceable debt or liability. So far as the other contradictory contentions raised by the learned counsel for the applicant that the said cheque was stolen, that is a defence of the applicant, which is required to be established by the applicant during trial and the same cannot be considered while exercising the powers under Section 482 Cr.P.C., for quashing of the proceedings.

21. For the aforesaid reasons, this Court do not find any merit in the instant application and the same is accordingly ***dismissed***.

Order Date :- 26th Feb., 2024

Shubham Arya

(Anish Kumar Gupta, J.)