



2024:PHHC:070574



1

CRM-M-25025-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

231

CRM-M-25025-2015
Decided on: 17.05.2024.

Anju

...Petitioner

Versus

Ram Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sameer Sachdeva, Advocate
For the petitioner(s).

Ms. Lishika Mehta, legal aid counsel for the respondent.

ANOOP CHITKARA, J.

Complaint case No.194 dated 09.09.2013 u/s 138 of Negotiable Instruments Act
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1. Seeking quashing of the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 [NIA, 1881], summons, and all subsequent proceedings, the accused filed the present petition in the year 2015 before this Court under Section 482 of Code of Criminal Procedure, 1973 [CrPC].
2. Despite service, the respondent remained absent, and this Court appointed Ms. Lishika Mehta, Advocate (PH-3638-2023) as legal aid counsel on behalf of the respondent.
3. I have heard counsel for the petitioner as well as legal aid counsel appearing for the respondent and gone through the pleadings.
4. The petitioner's counsel submits that the petitioner had filed the present petition for quashing of the complaint P-1 dated 09-Sep-2013, under Section 138 NIA. The complaint alleges the dishonor of four cheques for a sum of Rs.4,80,000/-. These cheques were issued by the petitioner against the purchase of plastic granules from respondent Company. The dispute between the same parties was for Rs.5,05,621/-. Out



CRM-M-25025-2015

of this, the complainant filed two complaints- the present one for 4,80,000/-, and the second one for the remaining Rs.25621/-. Regarding the second complaint, the petitioner approached this Court and the petition registered as CRM-M No.26013 of 2015 had been allowed on 02-Jul-2018 by quashing the said complaint.

5. Counsel for the petitioner further submits that even before the complainant had filed the complaint in September 2013, the petitioner had started discharging the liability w.e.f. 07-Aug-2013 and released the total payment of Rs.5,62,088/- to complainant in eleven regular installments (last on 26-Jun-2015). As per Para No.8 of internal page 3 of the reply filed by the respondent-complainant, she admits the receipt of Rs.5,62,088/- against the five cheque amounts of Rs.5,05,625/- but now claims that as per 24% interest, he is entitled to more amount. However, as far as liability under Section 138 NIA is concerned, the petitioner had admittedly discharged the liability qua the cheques by even making some excess payment, so for other grievance qua 24% interest, the complaint amounts to sheer abuse of legal process by misinterpreting the penal provisions of Section 138 of NIA, 1881.

6. Legal aid counsel appearing for the respondent submits that the petitioner claims to have made all the payments through RTGS, and such RTGS entries must be proved in trial Court by bank officials. Thus, it is a matter of trial whether these entries are valid or not. She further submits that even if the petitioner has made all the payments in installments of such debt, the respondent is entitled to get the interest @ 24% per annum as per general conditions mentioned in invoices issued by the respondent. It is also submitted that even if the petitioner had made the payments during the pendency of the complaint, it does not bar the complaint case from being maintainable against the petitioner.

7. An analysis of these submissions coupled with the pleading would lead to the following outcome.

8. The petitioner was summoned for 26.6.2015, she had already discharged the cheque liability. The complainant did not point out in the complaint P-1 that the petitioner had started releasing the cheque payments in installment and the complainant admits receiving the amount in reply filed to the present petition.

9. It would be appropriate to refer the grounds of petition which read as follows: -



2024:PHHC:070574



3

CRM-M-25025-2015

“(2). That the brief facts of the case in nutshell are that the petitioner as well as the respondent firms have inter-se business dealings. The respondent firm deals in the business of manufacturing of Plastic Granules and the petitioner firm used to purchase the said material from the respondent firm. It would be apt to mention here that the petitioner firm used to make the payments to the respondent firm within times, without any default and both the firms had good understanding in respect of their business dealings.

(3). That as per their routine business course, during the year 2013 the petitioner firm purchased the goods from the respondent firm and for security purpose, the petitioner firm issued certain cheques to the respondent firm for an amount of Rs. 5,05,621/- for the goods purchased. However, later-on on coming to know that the goods supplied by the respondent firm were defective, therefore, the matter was immediately brought to the notice of the respondent and it was also requested not to present the cheques for encashment since the goods purchased were found to be defective.

(4). That subsequently the respondent firm assured the petitioner regarding replacement of the defective goods and the petitioner keeping in view their long business relations and by reposing faith upon the respondent firm issued fresh cheques to the respondent firm for the same amount of Rs. 5,05,621/-, which were again issued as security. It would be apt to mention here that these cheques bearing dates, 10.4.2013, 30.4.2013, 30.5.2013, 30.06.2013, 25.7.2013.

(5). That as submitted the aforementioned cheques were given by the petitioner as security purposes. Subsequently, the petitioner approached the respondent and demanded the aforementioned cheques and assured the respondent that the petitioner is ready to make the full and final payment of the entire amount, but the respondent put off the matter on one pretext or the other. However, to show her bonafide the petitioner deposited an amount of Rs. 50000/- by way of RTGS on 7.8.2013, which were duly received by the respondent. Even after showing her bonafide by the petitioner that she is ready to make the payment, the respondent did not returned the cheques and rather filed the aforementioned complaint against the petitioner without any rhyme or reason. For the kind perusal of this Hon'ble Court a copy of the complaint is being annexed herewith as ANNEXURE P-1.

(7). That it would be pertinent to mention here that till August, 2013 upto 26.6.2015, the petitioner had deposited the entire amount in the account of the respondent through RTGS which has duly been accepted by the respondent without any protest whatsoever. A copy of the detail of the



CRM-M-25025-2015

payment is being annexed herewith as ANNEXURE P-2. The petitioner also possesses the statements of the bank, which clearly shows that the amount had been transferred in the account of the respondent firm as per the details (P-2) and the same can be produced before this Hon'ble Court at the time of arguments, if so required."

10. At this stage it would be relevant to extract paragraphs 7 and 8 of the reply filed by the complainant/respondent, which reads as follows:

"(7). That two set of complaints have been filed against the petitioner/accused against the petitioner/accused against cheques Nos.

Details :-

1. *Cheques No. 000125 dated 10-4-2013 amounting to Rs. 1,00,000/-
Cheque No. 000126 dated 30-4-2013 amounting to Rs. 1,25,000/-.
Cheque No. 000127 dated 30-5-2013 amounting to Rs. 1,25,000/-.
Cheque No. 000128 Dated 30-6-2013 amounting to Rs. 1,30,000/-
respectively, drawn at Bank of Baroda, Mohali*
2. *Cheque No. No.000129 dated 25.07.2013 amounting to Rs. 25,621/-
drawn at Bank of Baroda, Mohali.,*

Total Amount in two Complaints comes out to be Rs. 5,05,621/- minus interest.

(8). That the petitioner/accused claims to have deposited the amount Rs. 5,62,088/- in the account of the deponent/complainant according to her own whims and fancies, whereas the interest calculated @ 24 % p.a by the latter besides the principal amount comes out to be Rs. 4,36,298/-.

It is significant to assert that interest accrued on the principal amount from 23-7-2012 to 31-3-2015 @ of 24% p.a. comes out to be Rs. 4,36,298/-. Therefore, the principal amount + interest amount Rs. 9,98,386/- Needless to say that the petitioner/accused ended up depositing Rs. 5,62,088/- on his own prerogative and now in the garb of this she wants to get the case decided in her favour. Moreover the interest @ of 24% p.a has been admitted by her, which is transpired from Annexure R-1 i.e. her own statement of account and the invoices sent to her Annexure R-2 which unambiguously states interest @ 24% p.a. will be charged if payment is not made within 15 days. More importantly, the amount deposited by the latter cannot be rammedforcibly down the complainant's throat. It is a well settled proposition of law that once the complaints under section 138 of NI Act have been filed against the accused then in that eventuality the latter cannot dictate terms to the complainant and cannot force him to enter into a compromise on any amount convenient to him."

11. A perusal of para 8 of the reply dated 11.07.2016, explicitly points out that the respondent admits that the petitioner had deposited a sum of Rs.5,62,088/- in the account of the deponent/complainant. However, complainant after receipt of amount, neither issued any notice for its return nor did she return the amount. Her grievance is that the petitioner did not pay the interest component. A perusal of para 7 of the reply



2024:PHHC:070574



CRM-M-25025-2015

refers to the cheque amount in question, i.e., Rs.5,05,621/-, whereas the respondent admits that the petitioner has deposited more, i.e., Rs.5,62,088/-. Thus, the respondent had already deposited the amount, which was more than the cheque's amount, and it is prima facie established that the accused has already paid the entire cheque amount.

12. The proposition of law that requires an analysis and a definitive answer is when the complainant has admitted that the accused had undisputedly discharged the entire liability for the payment as mentioned in the cheque, and the cheque was not issued for the interest component but for the principal liability, would these cheques still remain legally enforceable debts or other liability, to claim the interest payable for late payment, as mentioned in the bill or receipt of goods for which the cheque was issued?

13. It would be appropriate to refer to the provisions of Negotiable Instruments Act, 1881, that are relevant to understand the legal implication when the entire cheque amount stands discharged but some more amount is claimed over and above the amount as an interest component, mentioned in the contract against which the cheque was issued.

[S. 82]. Discharge from liability. —maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) **by cancellation.** —to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) **by release.** —to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) **by payment.** —to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

14. As per S. 82 NIA 1881, if the payment is made in due course of the amount due thereon, then the liability stands discharged. The words due course when read with S. 138 would mean within the time specified in the notice. It is because of the fulfilment of the contractual obligation and meeting with the statute's primary objective of securing the negotiable instruments and cheque amount. A reading of the above provisions makes it crystal clear that given the statutory mandate of S. 82 of NIA, the moment the holder of the cheque accepts and admits the receipt of the entire cheque amount, the



CRM-M-25025-2015

Negotiable Instruments Act, 1881 stops applying because the dishonour of a cheque is punishable under S. 138 of NIA only on existence of a legally enforceable debt or liability.

15. The proposition surrounds the question that when a cheque is given to discharge a legally enforceable debt or other liability, and the contract also mentions that in case the payment is not made on time, then the drawer of the cheque, i.e., the party liable to make payment, shall also be liable to pay interest at the specified or unspecified rate?

16. It would also be appropriate to refer to the following provisions of Negotiable Instruments Act, 1881, relating to the interest, which read as follows:

[S. 79]. Interest when rate specified.—When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

[S. 80]. Interest when no rate specified.— When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation. —When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

17. Given the above, the penalization can only be to the extent of the amount mentioned in the cheque that gets dishonored.

18. When a cheque dishonors, and the banker intimates about the non-receipt of cheque amount, the holder of the cheque takes the following steps:

(a). Within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, 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 notice; in writing, to the drawer of the cheque.



CRM-M-25025-2015

(b). Waits for fifteen days from the receipt of the said notice [fifteen days + the days taken for delivering such notice] to enable the drawer of such cheque to make the payment of the cheque amount to the payee or, as the case may be.

(c). If the payment is not made within above mentioned time, after that, within one-month files a complaint under S. 138 of NIA in the concerned Court of competent jurisdiction.

19. After the prosecution is launched the offense can be compounded by resorting to the enabling provision of S. 147 of NIA.

20. Ss. 79 and 80 prescribe the liability on the interest payment of the negotiable instruments, including cheques. In the present complaint, the complainant's stand is that in the event of non-payment on time, the interest at 24% per annum on the unpaid amount will be applicable. The petitioner did not dispute such an averment, but the petitioner's case is that more than the amount mentioned in the cheques was paid, including the interest component.

21. As per the provision of S. 80 of NIA, either the initial contract or the notice and/or complaint has to specify the interest. Thus, the cheque cannot contain the interest part because it will attract only when the cheque amount is not encashed, i.e., dishonored.

22. The most significant provision of NIA, 1881 that favors the holder of cheque is the presumptions under Sections 118 & 139, and the provisions relevant to answer the proposition, reads as follows:

[S. 118]. Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made: —

(a) **of consideration:** —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

[S. 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



2024:PHHC:070574



CRM-M-25025-2015

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 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 xxx

Explanation. —For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

[S. 139]. Presumption in favour of holder. —all 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.

23. As per S. 138, when 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, the person who issues or indorses such a cheque, is liable for punishment in terms thereof. The most crucial words are “for the discharge, in whole or in part, of any debt or other liability” and such “debt of other liability” means a legally enforceable debt or other liability. The implication of S. 82 NIA is that if the entire cheque amount is paid and accepted within the limitation mentioned in S. 138 NIA, then such liability fastened through possessing a signed cheque, stands discharged.

24. S. 118 of NIA raises a presumption in favour of the holder of the cheque for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. Thus, the presumption is only for a consideration of cheque amount, which as per S. 138 has to be either legally enforceable debt or any other liability.

25. A perusal of the complaint does not refer to any interest.

26. In the absence of a specific demand of interest, by mentioning the rate of interest based on the contractual documents or under the provisions of S. 80 of NIA, the complainant cannot utilize blank or security cheques to claim interest. It is because cheques were given for the amount corresponding to the amount mentioned in the ledger or the books of accounts, referring to the bills or invoices. The claim or imposition of interest, which is not mentioned in the cheque, is subject to proof and there would



CRM-M-25025-2015

be no presumption in favour of the holder for such an interest, which does not form part of the cheque. Thus, the presumption under S. 118 does not attract to unspecified rate of interest and uncalculated interest amount on the cheque that gets dishonored.

27. A cumulative reading of Ss. 79, 80, 82, 118, 138, and 139 of NIA makes it crystal clear that given the statutory mandate of S. 82 of NIA, before filing of the complaint in terms of S. 138 NIA, the moment the complainant receives the amount equal to the cheque amount, accepts it and admits receipt of the entire cheque amount, S. 82 switches on and triggers the discharge of the entire liability mentioned in such a cheque.

28. As per the provision of S. 80 of NIA, either the initial contract or the notice and/or complaint has to specify the interest. Thus, the cheque cannot contain the interest part because it will attract only when the cheque bounces. However, in case of a specific agreement vide which a blank cheque was given with permission to fill the accrued interest, the cheque must not exceed the amount due after calculating the interest and specifying the principal and the interest along with the interest rate, in the complaint.

29. In the present petition, the complainant admitted the receipt of money against the liability, and the receipt was more than the cheque amount. However, neither the complainant withdrew the complaint nor did the parties go for compounding under section 147 of NIA. Rather the accused came up before this court by filing the present petition under section 482 CrPC seeking the quashing of the summoning order and subsequent proceedings. The complainant filed her reply admitting the receipt of the cheque amount, even more than that, but stated that the complaint is still maintainable because the accused did not pay the interest component. This gave rise to the proposition of law that is it permissible for the complainant to treat such cheque as a legally enforceable debt for the interest part or not? The answer is plain and simple. The dishonor of a cheque becomes a punitive offense subject to the subsistence of legally enforceable debt or other liability.

30. In the present case, the cheque was neither to discharge any legally enforceable debt or any other liability for interest part but was for the amount due for the purchase of articles. Given the above, once the complainant had accepted the money equal to the



2024:PHHC:070574



10

CRM-M-25025-2015

cheque amount, the same cheque would not become an instrument to launch prosecution for claiming the interest in delayed payment.

31. Given the above, petition is allowed. Impugned complaint and all consequential proceedings arising from the same, are quashed. All pending applications, if any, stand closed. Concerned Officer of the legal service authority is directed to release remuneration of legal Aid counsel as per rule.

(ANOOP CHITKARA)
JUDGE

17.05.2024
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Whether speaking/reasoned: Yes
Whether reportable: Yes