

Section 138 NI Act covers Dishonour of cheque issued for discharge of later liability

written by Rajeev Rambhatla | June 17, 2019

The Hon'ble High Court of Chhattisgarh in its recent judgement in the case of *Madan Tiwari vs State of Chhattisgarh*^[1], held that a cheque issued for discharge of later liability is clearly covered under the ambit of Section 138 of the Negotiable Instruments Act, 1881 ("the Act"). The bench of Justice Rajani Dubey took this view in light of the fact that the signing of cheque by the Accused itself amounts to admission of his liability considering the fact that in this particular case the Accused did not rebut the presumption under Section 139 of the Act.

Factual Background:

The Applicant/Accused was running an institution by name Pleasant Health Welfare Foundation at Dongargaon and he had in turn appointed the Complainant and 21 other persons on an agreement/contractual basis. The Complainant and other persons contended that they deposited certain amount with

the institution as per the agreement between the parties. As per the agreement,

the amount so deposited was to be returned to the Complainant and other persons

after completion of probation period of one year.

The Complainant and other persons further contended that even after completion of the probation period they were not regularized hence they are entitled to receive a refund of the amount paid by them as deposit. Therefore, the Complainant and other persons demanded Rs. 3,16,000 from the Applicant/Accused. The Applicant/Accused thereafter issued a cheque bearing No.

402428 dated 20.03.2004 in favour of the Complainant. When the Complainant presented the aforementioned cheque to his banker, the said cheque was dishonoured by the bank citing the reason of insufficient funds in the account

of the Applicant/Accused. The Complainant then issued a legal notice dated 10.05.2004

to the Applicant/Accused and when no response was received by the Applicant/Accused, the Complainant filed a complaint under Section 138 of the Act. After the charges were framed and the evidence was recorded, the learned trial

court allowed the Complaint holding that the Applicant/Accused has committed an

offence punishable under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for two years and a fine of Rs. 5,000/- with default stipulation. Thereafter, the Applicant/Accused filed an appeal before the appellate authority challenging the aforementioned order of the trial court. The appellate authority affirmed the sentence pronounced by the learned trial court, aggrieved by this, the Applicant/Accused filed the instant review petition

before the High Court of Chhattisgarh.

Ruling/Ratio – Section 138:

The Hon'ble Justice heard contentions of both parties and after due consideration was given to averments of both sides, Justice Dubey

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that the cheques undoubtedly represent the outstanding liability even if such liability is a later liability and the fact that cheques were signed by the Applicant/Accused also amounts to admission on his part given that the Applicant/Accused did not succeed in rebutting the presumption under Section 139 of the Act. Therefore, Justice Dubey dismissed the review petition and upheld the sentence pronounced by the learned trial court and held that such cheques indeed fall under the ambit of the Act.

Analysis – Section 138:

Justice Rajani Dubey pronounced the judgement and rejecting the review petition she observed:

" From close scrutiny of the statements of the witnesses, it is clear that the applicant had signed and gave the cheque to the complainant. That the purport of the special law under the Negotiable Instruments Act is to ensure that the promise to pay is abided by the person so promising. The provision under Section 139 of the NI Act is that it shall be presumed that the holder of a cheque received the cheque of the nature referred to in Section 138 of NI Act for the discharge, in whole or in part, of any debt or other liability. In light of above, the signing of cheque by the applicant indicate that he admitted his liability, and he has not rebutted the presumption of 139 Negotiable Instruments Act, therefore not only debt but the liability also calls for criminal proceedings under this act. With reference to the facts of the present case, the Court noted that the trial court as well as the Appellate Court having found that cheque contained the signatures of the accused/applicant and it was presented in the Bank of the presumption under Section 139 was rightly raised which was not rebutted by the accused. Both the courts below have convicted the applicant under Section 138 of NI Act. The Trial Court and the Appellate Court arrived at the specific concurrent factual finding that the cheque had admittedly been signed by the applicant-accused. Thus, I find no merit in this revision and the same is hereby dismissed and it is dismissed as such."

Wherefore, if a person is signing a cheque for discharge of a present or future liability then such act of signing the cheque coupled with non-rebuttal of presumption under Section 139 of the Act amounts to admission of the liability and thus dishonour of such cheque is covered under Section 138 of the Act.

Further, Justice Dubey relied on the judgement of the Hon'ble Supreme Court of India in the case of *Sampelly Satyanarayana Rao v Indian Renewable Energy Development Agency*

Ltd[2],

wherein it was held that the meaning expression “for discharge of any debt or liability” as occurring under Section 138 of the Act depends on the nature of each individual transaction. If on the date of the cheque, the liability or

debt exists and has become legally recoverable, the section is attracted otherwise it's not. Justice Dubey also relied on the judgement in the case of *Indus Airways (P) Ltd. vs Magnum Aviation*

(P) Ltd[3].,

wherein it was held by the apex court that once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act, such cheques

undoubtedly represent the outstanding liability. Further, in the case of *Rangappa vs Sri Mohan*[4],

the Hon'ble Supreme Court held that once issuance of a cheque is complete and signature thereon is admitted, presumption of a legally enforceable debt in

favour of the holder of the cheque arises. The onus is on the accused to rebut

such presumption.

Conclusion:

The Hon'ble Judge has taken a holistic

view of the facts in the instant case and has rightly upheld the sentence pronounced by the learned trial court. This is a welcome judgement, especially

for contractors and daily wage employees whose deposits are often taken advantage of by their contractual employers. This judgement ensures that just because the cheque is post-dated or that the liability involved is future liability, the issuer of the cheque cannot escape conviction under Section 138

of the Act in the event of dishonour.

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[1] MANU/CG/0294/2019

[2] (2016) 10 SCC 458.

[3] (2014) 12 SCC 539.

[4] (2010) 11 SCC 441.

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