Neutral Citation No. - 2024:AHC:102434
A.F.R
Reserved on: 13.05.2024
Delivered on: 05.06.2024

Court No. - 92

Case :- APPLICATION U/S 482 No. - 9536 of 2024
Applicant :- Smt. Archana Singh Gautam
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Diwakar Tiwari, Gyanendra Singh
Counsel for Opposite Party :- Ashish Pandey, G.A.,Vivek Kumar Singh

Hon"ble Arun Kumar Singh Deshwal,J.

1. Heard learned counsel for the applicant, learned counsel for the opposite party no. 2 and Sri Brijesh Kumar Dwivedi, learned AGA for the State.

2. The present application has been filed for quashing the entire criminal proceeding, including the impugned summoning order dated 15.02.2024 passed by the learned Special Judicial Magistrate-II, Banda in Complaint Case No. 712 of 2023 (Brajesh Kumar Singh Vs. Smt. Archana Singh Gautam and others), under Section 138 N.I. Act, 1881, P.S. Kotwali Nagar, District Banda, pending in the Court of learned Special Judicial Magistrate-II, Banda.

3. The counsel for the applicant contends that the Bank returned the cheque in question because the cheque was invalid as the cheque in question was issued from the account maintained in Allahabad Bank on 02.06.2023, though the Allahabad Bank had already merged into the Indian Bank on 01.04.2020, and the cheque of the Allahabad Bank was valid till 30.09.2021; therefore, on the date of issuance as well as presentation of the cheque, it was invalid. Therefore, bouncing, of such the invalid cheque will not attract the liability u/s 138 N.I. Act.

4. Per contra, learned counsel for the opposite party no. 2 has relied upon the judgment of Hon'ble Apex Court in the case of **NEPC Micon Ltd. V. Magma Leasing Ltd (1999) 4 SCC 253** in the judgment the Apex Court observed in paragraph no. 7 that the expression "insufficient to honour the cheque is a genus of which the expression" that account being" is species and paragraph no. 9 of the above judgment the Hon'ble Apex Court has observed that "the interpretation which sought for, were given, then it would only encourage dishonest persons" should be avoided. On relying on the above judgment, the counsel for the opposite party no. 2 has submitted that the invalid cheque issued by a person is also covered u/s 138 N.I. Act. He also relied upon the judgment of Delhi High Court in the case of **Sri Premanand Prusty Vs. Smt. Sita Devi** passed in **CRL.M.C. No. 1566 of 2023**, in that case the Delhi High Court had observed that once the signature on the cheque is not disputed then the cheque if returned on the ground of its validity then the *prima facie* the offence u/s 138 N.I. Act will be attracted.

5. Learned AGA has also adopted the argument of counsel for the opposite party no. 2 and submitted that if the applicant was aware that the cheque in question has been declared invalid as the Allahabad Bank has already been merged into Indian Bank then just to cheat the opposite party no. 2, he had issued this cheque; therefore, the offence u/s 138 N.I. Act, will be attracted.

6. After hearing the rival submission of the counsel for the parties and perused the record, it is clear that the Allahabad Bank had merged into the Indian Bank on 01.04.2020. Thereafter, a wide circular was made by the Indian Bank in newspapers mentioning the fact that all the cheques issued by Allahabad Bank can be exchanged with the cheques of Indian Bank by 30.09.2021, and the cheque from Allahabad Bank will be honoured by 30.09.2021.

Therefore, the cheque issued by the Allahabad Bank was valid till 30.09.2021, and all the cheques of Allahabad Bank which were presented before the Indian Bank till 30.09.2021, were honoured by the Indian Bank, and after 30.09.2021, cheques issued from the account maintained by the erstwhile Allahabad Bank were declared invalid for honouring. Section 138 N.I. Act prescribes the condition for initiation of proceeding on bouncing the cheque in the proviso (a) of Section 138 N.I. Act. As per the proviso (a) of Section 138 N.I. Act, cheque must be presented to the Bank during its validity. Section 138 N.I. Act is being quoted as under:-

"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 [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, [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."

7. From the perusal of Section 138 N.I. Act, it is clear that if any invalid cheque is presented before the Bank and the same was dishonoured, then there is no liability under Section 138 N.I. Act would be attracted, and the cheque of Allahabad Bank is invalid after 30.09.2021 after merging the Allahabad Bank into the Indian Bank on 01.04.2020. Therefore, dishonouring such cheques after 30.09.2021 will not attract liability u/s 138 N.I. Act.

8. It is also relevant to mention here that as per Section 118 (b) of N.I. Act a cheque shall be deemed to be drawn on the date which is mentioned in the cheque even if same may post dated.

9. In the present case, a cheque dated 02.06.2023 of erstwhile Allahabad Bank was presented to the Indian Bank on 21.08.2023, and the same was returned on 25.08.2023 with the endorsement “wrongly delivered not drawn on us”. Therefore, the cheque in question was invalid on the date of presentation before the Indian Bank.

10. So far as the judgment of **NEPC Micon Ltd. (Supra)** relied upon by the counsel for the opposite party No. 2 is concerned, that judgment relates to the different kinds of reasons for dishonouring the cheque that would come under the category of insufficient funds, but in the present case, the question is not simply the reason for dishonouring the cheque, but the question is validity of the cheque as mentioned in proviso (a) of Section 138 of N.I. Act because if the cheque itself is invalid, then the Bank is bound to dishonour the same. So far as the judgment of the Delhi High Court in **Sri Premanand Prusty (Supra)** relied upon the counsel for the opposite party no. 2 is concerned, this Court is of the view that this judgment has not been correctly decided.

11. In view of the above analysis, the cheque in question, which was issued from the account maintained in erstwhile Allahabad

Bank after its merger with Indian Bank, was not the valid cheque on the date of presentation before the Indian Bank as required by proviso (a) of Section 138 of N.I. Act; therefore, dishonouring the same will not attract the liability u/s 138 N.I. Act.

12. This Court is also of the view that the above analogy will also be applicable to the cheques of all banks which had merged with other banks.

13. Therefore, the present application is **allowed** and the proceeding of Complaint Case No. 712 of 2023 (Brajesh Kumar Singh Vs. Smt. Archana Singh Gautam and others), under section 138 N.I. Act, pending in the Court of Learned Special Judicial Magistrate-II, Banda, is hereby **quashed**.

Order Date :- 05.06.2024
Nisha

Digitally signed by :-
NISHA KUMARI
High Court of Judicature at Allahabad