

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Cril.Petn.No. 35 of 2017

Thokchom Umavati Devi aged 56 years W/O
Elangbam Bijoykumar Singh of Keishamthong
Elangbam Leikai P.O & P.S Imphal District Imphal
West Manipur.

... Petitioner

- Versus -

The City Commercial Investment Co.Pvt. Ltd at
Uripok P.O & P.S Imphal District Imphal West
Manipur, represented by its General manager
Wangjam Premchandra Singh aged about 48 years
S/O late W. Nimai Singh of Moirang Hanuba
Maning Leikai P.O Imphal PS Lamphel, Imphal
West Manipur.

... Respondent

**B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the petitioner	::	Mr. H. Nabachandra, Advocate.
For the respondent	::	None appears.
Date of Hearing	::	05.04.2019.
Date of Judgment & Order	::	27.04.2019.

**JUDGMENT & ORDER
(CAV)**

[1] This Criminal Petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking to quash the proceedings in

Criminal (C) Case No. 796 of 2014 pending on the file of the learned Chief Judicial Magistrate, Imphal West.

[2] The respondent has filed Criminal (C) No. 796 of 2014 under Section 138 and 142 of Negotiable Instruments Act read with Section 420 IPC and under Section 200 of Cr.P.C. against the petitioner herein praying to take cognizance under Section 138 of Negotiable Instruments Act and take suitable action against the petitioner in accordance with law and punish her for the offence committed and to order payment of compensation out of the fine amount under Section 357 of Cr.P.C. to the respondent.

[3] In Criminal (C) No. 796 of 2014, it is stated that the petitioner had borrowed a sum of Rs. 1.40 lakhs from the respondent on 31.08.2004 and agreed to repay the same with 25 monthly instalments with an interest at the rate of 3.8% per month. When the respondent requested the petitioner to repay the amount with accrued interest on 13.10.2014, the petitioner had given a cheque to the respondent and when the respondent presented the cheque for encashment through its Banker, i.e. Bank of India, Imphal Branch, the Bank has returned the cheque with an endorsement "stop cheque". On 20.10.2014, the respondent issued a statutory notice to the petitioner, which was replied by the petitioner on 07.11.2014. Despite receipt of the legal

notice, the petitioner had not repaid the amount, however, replied on 07.11.2014. Hence, the respondent preferred a complaint. The learned Chief Judicial Magistrate has taken cognizance and issued summons to the petitioner.

[4] During the course of proceedings in Criminal (C) No. 796 of 2014, the respondent was examined as C.W.1 and at the stage of examination of complaint witnesses, on 16.09.2016, the petitioner had filed an application under Section 340 of Cr.P.C. seeking preliminary enquiry coupled with the prayer to make a complaint in writing for the offence punishable under Sections 465, 467, 471 and 193 of IPC. The trial Court dismissed the said application. Aggrieved by the same, the petitioner preferred Criminal Miscellaneous Appeal No. 3 of 2017 before the learned Sessions Judge, Imphal West. By the judgment dated 21.08.2017, the appellate Court dismissed the appeal preferred by the petitioner. Thereafter, the petitioner has come up with the present petition under Section 482 of Cr.P.C. to quash the complaint in Criminal (C) No. 796 of 2014

[5] Heard Mr. H. Nabachandra, the learned counsel for the petitioner and none appears for the Respondent.

[6] The learned counsel for the petitioner contended that the respondent obtained blank cheque bearing No. 398728 without writing the amount thereon as also without the name of the payee and the date. He would submit that any cheque without writing amount thereon cannot be called a cheque and the return of the cheque is not for insufficiency of funds and the reason for return of cheque does not make out any offence under Section 138 of the Negotiable Instrument Act.

[7] The learned counsel further submitted that at the time of examination, the respondent deposed that the cheque was returned on the ground of insufficiency of funds and the same is false evidence and in order to make the ingredient of Section 138 of the Negotiable Instruments Act, the respondent intentionally gave such false evidence.

[8] The learned counsel next contended that at the time of cross examination of C.W.1, he stated that the amount of Rs.6.00 lakhs, name of payee and the date were written by the staff of the respondent. According to the learned counsel, the said evidence means that the respondent manipulated the cheque in the absence of the petitioner for a wrongful gain by him as to cause wrongful loss to the petitioner.

[9] The learned counsel then argued that the order of the learned Chief Judicial Magistrate in Criminal Miscellaneous Case No. 417 of 2016 dated 23.03.2017 is biased, arbitrary and without application of judicial mind. Equally, the judgment of the appellate Court preferred against the order passed in criminal Miscellaneous Case No. 417 of 2016 is also illegal, biased and unconstitutional. Further, the learned counsel argued that the whole allegation based on which Criminal (C) Case No. 796 of 2014 was filed does not disclose and material for the offence under Section 138 of Negotiable Instrument Act and the continuation of the proceedings would only be an abuse of the process of law. To fortify his submissions, the learned counsel relied upon the following decisions:

(1) Avon Organic Ltd v. Poiner Product Ltd and others, reported in 2003 (2) ALD Cri 219.

(2) Rama Gupta and others v. Bakeman's Home Products Ltd, reported in 1994 79 CompCas 473: 1993 Cri LJ 744.

(3) Girdhari Lal Rathi v. P.T.Ramanujachari and another, reported in 1997(1) ALT Cri 509.

(4) Monaben Ketanbhai Shah and another v. State of Gujarat and others in Appeal (Crl) No. 850 of 2004, decided on 10.08.2004 on the file of Hon'ble Supreme Court of India.

(5) S.M.S. Pharmaceuticals Ltd v. Neeta Bhalla and another in Appeal (Crl) No. 664 of 2002, decided on 20.02.2007 on the file of the Hon'ble Supreme Court of India.

[10] Per contra, the learned counsel for the respondent submitted that having cross-examined the respondent and having lost the attempt made by the petitioner in Criminal Miscellaneous Case No. 417 of 2017 and the appeal, the petitioner has chosen to file the present petition seeking to quash the complaint made under Section 138 and 142 of the Negotiable Instruments Act and there is no bona fide in the petition filed by the petitioner. He added that with an ulterior motive, the petitioner has filed the present petition and prayed for dismissal of the same.

[11] I have considered the submissions made by the learned counsel appearing for the petitioner and also perused the materials available on record. There was no representation for the respondent.

[12] The grievance of the petitioner is that the whole allegation set out in Criminal (C) Case No. 796 of 2014 does not disclose any material for the offence of Section 138 of the Negotiable Instrument Act. The further grievance of the petitioner is that the reason for return of the cheque in question does not

make out the offence under Section 138 of the Negotiable Instrument Act.

[13] According to the petitioner, money was taken by her on 31.08.2004 and steps were taken for recovery of the money only on 13.10.2014, after a long gap of 10 years, which is barred by Article 47 of the Schedule to the Indian Limitation Act. In fact, C.W.1, who gave evidence on behalf of the respondent was not the General Manager at the relevant point of time and he does not know about the money taken in the year 2004. According to the petitioner, she has repaid the amount through loan recovery agent viz., Babul and all these facts were stated in the defence statement of the petitioner, however, the trial Court did not acknowledge the filing of the defence statement as written objection to the Criminal (C) Case No. 796 of 2014.

[14] It appears that the respondent/complainant was examined and also cross-examined by the petitioner and during examination of C.W.1, 11 documents were produced, which includes Ex.C4-original copy of the cheque in question. Stating that the cheque in question was misused by the respondent for a wrongful gain as to cause a wrongful loss to the appellant and that to whom to pay, the date as well as the amount were written by the office person of the respondent with mala fide intention as to

cause loss to the appellant and also the respondent/C.W.1 gave wrong statement intentionally in order to maintain the complaint under Section 138 of the Act, the petitioner filed application under Section 340 Cr.P.C. seeking for an enquiry. By a reasoned order dated 23.03.2017, the learned Chief Judicial Magistrate, dismissed the said application. Aggrieved over the same, the petitioner had preferred the appeal being Criminal Miscellaneous Appeal Case No. 3 of 2017 before the Session Judge, Imphal West. By the judgment dated 21.08.2017, the appellate Court dismissed the appeal.

[15] The allegation of the petitioner that the respondent in his statement has stated that the amount of Rs. 6.00 Lakhs mentioned in Ex.C4 cheque, Ex.C4-cheque was written by the staff member of the respondent and thus Ex.C4 was a forged document are all matter of evidence and the same cannot be decided in the present petition. In the present case, the cheque in question was admittedly given by the petitioner to the complainant and the said cheque bears the signature of the petitioner. When the petitioner admitted issuing of blank cheque duly signed, she cannot contend that the writing in the said cheque was made by the staff member of the respondent.

[16] It is pertinent to note that body of the cheque need not necessarily be written by the accused and it can be in the handwriting of anybody else or typed on a type machine so long as the accused does not dispute the genuineness of the signature on the cheque. As stated supra, admittedly, the petitioner has not disputed the signature found in the cheque in question.

[17] On a perusal of the records, it is seen that Ex.C4 was extended on 13.10.2014 and the same was presented for encashment to the Bank but returned with an endorsement “stop cheque” and then the respondent preferred a complaint under Section 138 and 142 of the Negotiable Instruments Act on 26.11.2014 after issuing the statutory notice. In fact, while dismissing the appeal being Criminal Miscellaneous Appeal Case No.3 of 2017 preferred by the appellant, the learned Session Judge, Imphal West observed as under:

“9..... On examining the said Ext.C4, it is very clear that the said cheque-Ext.C4 was executed on 13.10.2014 and then the said cheque was presented to the Bank for encashment but return with a remark STO SCQ 24/10/2007 and then the complaint case under section 138 and 142 of NI Act was filed on 26.11.2014 by enclosing the said cheque-Ext.C4. Therefore, it is very clear that the alleged forgery of the said cheque was made prior to filing of the complaint case. In other

words, the alleged, forgery, tempered or fabricated was not done when the said cheque-Ext.C4 was in the custody of the Court. Therefore, the trial Court rightly held that no enquiry regarding the alleged forgery, tempered or fabricated of the said cheque-Ext.C4 is justified or necessary.”

[18] As against the said findings of the learned appellate Court, the petitioner has not filed any appeal and the judgment rendered in Criminal Miscellaneous Appeal Case No. 3 of 2017 attained finality. Thus, it is clear that having failed in the earlier attempts made by her for preliminary enquiry under Section 340 of Cr.P.C., the petitioner has filed the present petition seeking to quash the proceedings in Criminal (C) Case No. 796 of 2014, which cannot be entertained in the eye of law. Having participated in the trial and cross-examined C.W.1 now the petitioner cannot seek quashing of the complaint case preferred by the respondent. Since trial commenced and the main case is in part-heard stage, entertaining the petition to quash the very same proceeding cannot be permitted.

[19] The contention of the petitioner that the respondent has not made out a prima facie case either under Section 138 of Negotiable Instruments Act or under Section 420 IPC cannot be gone into at this stage. As stated supra, the aforesaid contention

requires a thorough trial and then only, the truth will come light. Further, there exist no materials at present for this Court to come to a conclusion that the cheque in question was fabricated one. Therefore, this Court is of the view that continuation of the proceedings against the petitioner would not cause much hardship and also would not amount to abuse of the process of the Court.

[20] It is to be pointed out that the decisions relied upon by the learned counsel for the petitioner in support of his submission in the facts and circumstances of the case are not applicable to the case on hand though the subject matter pertains to the offence under Section 138 of the Negotiable Instruments Act. Further, the aforesaid decisions cited by the petitioner have no direct applicability in the present petition filed under Section 482 of Cr.P.C. Therefore, this Court does not elaborate upon the said decisions.

[21] In view of the above discussion, I am of the view that the Criminal Petition No.35 of 2017 preferred by the petitioner is devoid of merits and, accordingly, it is dismissed.

JUDGE

FR/NFR

Larson