

Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 15 of 2022

Date of Decision: 16.12.2022

Shri. Fourness Dhar Vs. Smti. Corsica Shabong & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. L. Shongwan, Adv. Mr. S.M. Suna, Adv.
For the Respondent(s)	:	Mr. S. Sen, Adv. for R 1. Mr. A.G. Momin, Adv. for R 2.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. This is a petition filed under Section 482 Cr.P.C, wherein the petitioner has approached this Court with a prayer to set aside and quash the Complaint Case No. 114 (S) of 2021 under Section 138 of the Negotiable Instruments Act (NI Act), 1881 and which case is pending before the Court of the learned Judicial Magistrate First Class at Shillong.

2. Heard Mr. L. Shongwan, learned counsel for the petitioner who has submitted that the case of the petitioner is that on 15.10.2019, the

petitioner and the respondent No. 1 on one side and the proforma respondent on the other side, have jointly entered into an Agreement for Sale of a plot of land situated at Bishop Cotton Road, Shillong measuring about 18,262.69 sq.ft, which land belongs to the proforma respondent, with the petitioner and the respondent No. 1 being the proposed buyers. The agreed consideration for the said plot of land is ₹ 2,60,00,000/- (Rupees two crores sixty lakhs).

3. Prior to the date fixed for execution of the final Sale Deed, in the month of May, 2019, the respondent No. 1 apparently backed out of the deal citing inability to fulfil her part of the monetary commitment. The petitioner then agreed to carry on with the proposed sale transaction by going single and pursuant to this, a Settlement Agreement dated 13.08.2020 was drawn up between the petitioner and the respondent No. 1.

4. According to the terms of the said Settlement Agreement, the petitioner has agreed to refund a sum of ₹ 1,50,00,000/- (Rupees one crore fifty lakhs) to the respondent No. 1 which sum of money was said to have been paid to the proforma respondent by the respondent No. 1 as advance payment in respect of the property. The said amount was to be disbursed in the following manner:

- i. ₹ 35,00,000/- (Rupees thirty-five lakhs) as the first instalment to be paid in the last week of September, 2020;

- ii. ₹ 37,50,000/- (Rupees thirty-seven lakhs and fifty thousand) as the second instalment to be paid in the month of March, 2021;
- iii. ₹ 37,50,000/- (Rupees thirty-seven lakhs and fifty thousand) as the third instalment to be paid in the month of September, 2021 and;
- iv. ₹ 40,00,000/- (Rupees forty lakhs) only as the fourth and last instalment to be paid in the month of March, 2022.

5. The petitioner then paid the first of the instalments by remitting the amount of ₹ 5,00,000/- (Rupees five lakhs) by cash and ₹ 30,00,000/- (Rupees thirty lakhs) by cheque, about five of them for varying amounts. Apart from this, the petitioner has also handed over five blank cheques to the respondent No. 1.

6. The learned counsel has also submitted that sometime in the month of March, 2021, the petitioner received reliable information which created doubt about the claim of the respondent No. 1 as regard the payment of advance amount of ₹ 1,00,00,000/- (Rupees one crore) to the proforma respondent and accordingly, to allay this doubt, the petitioner called for a joint meeting of the three of them on 16.03.2021, the said meeting being held at the office of the petitioner at Lummawrie, Laitumkhrah, Shillong.

7. It was at this meeting that the proforma respondent clarified that she was not paid the ₹ 1,00,00,000/- (Rupees one crore) by the respondent No. 1. To this effect, the proforma respondent has re-confirmed her claim that she has not received the said sum of one crore from the respondent No. 1, by way of a letter dated 06.04.2021 issued upon the petitioner herein and which letter was also attested by her two children as witnesses.

8. The petitioner then instructed his Bank to stop payment of the 2nd, 3rd and 4th instalments to the respondent No. 1 and not to process any cheque if presented for payment in this connection. The respondent No. 1, apprehending that the petitioner might stop payment, went ahead and on 26.04.2021 went to the HDFC Bank Rynjah Branch, Shillong to en-cash a cheque bearing No. 000095 for a sum of ₹ 30,00,000/- (Rupees thirty lakhs). However, the cheque was returned unpaid on 28.04.2021 with the endorsement "Payment stopped by drawer"

9. The respondent No. 1 then caused issue of a legal Notice dated 05.05.2021, under Section 138 of the Negotiable Instruments Act, 1881 through her counsel with a demand that the petitioner pay the sum of ₹ 30,00,000/- (Rupees thirty lakhs) which was responded by the petitioner vide reply dated 02.07.2021 denying the claim.

10. That the respondent No. 1 by filing the complaint before the Court and the registration of the same as C.R. Case No. 114 (S) of 2021 under Section 138, NI Act, is nothing, but an abuse of the process of the

court with no substance in the said complaint and as such, this petition under Section 482 Cr.P.C has been preferred to put a stop to the process which is malicious and cannot be sustained in law, submits the learned counsel for the petitioner.

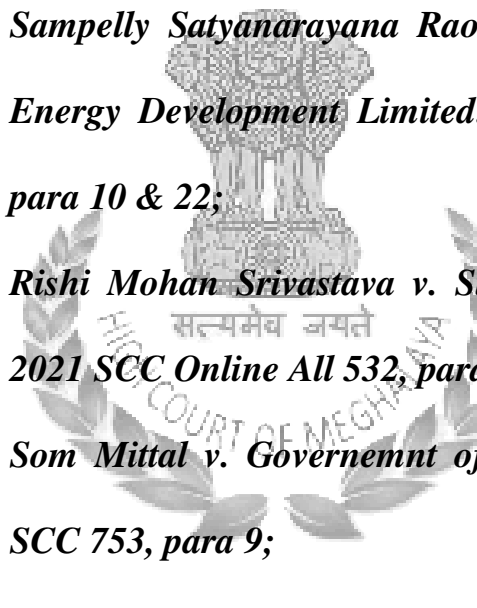
11. The learned counsel for the petitioner has submitted that one of the essential ingredients for a case to be prosecuted under Section 138 of the NI Act, is that cheque in question should have been issued for the discharge in whole or in part of any debt or other liability which is legally enforceable if on the date of the issue of the cheque, no such debt or liability exists, then the provision of this section cannot be attracted.

12. The petitioner has further clarified his stand by submitting that the fact that the respondent No. 1 has concealed material facts at the time when the said Agreement dated 13.08.2020 was executed between the parties concerned, inasmuch as, the fact that she has not made any payment to the proforma respondent pursuant to the conditions as could be found in the said Sale Agreement dated 15.10.2019 has not been disclosed to the petitioner when he was made to commit to refund ₹ 1,50,00,000/- (Rupees one crore fifty lakhs) to the respondent No. 1 when actually, the proforma respondent who is the beneficiary of the same has not receive the said sum.

13. The said Agreement dated 12.08.2020 is therefore rendered voidable as per Section 19 of the Indian Contract Act, as far as the petitioner is concerned, submits the learned counsel. This is based on the

fact that the respondent No. 1 in spite of being confronted with this question in the show cause issued by the petitioner against the legal notice issued by the respondent No. 1 as to the fact that the proforma respondent has not received the sum of ₹ 1,00,00,000/- (Rupees one crore) from her, the respondent No. 1 has not given any reply or a satisfactory explanation for the same.

14. In support of his contention and submission, the learned counsel for the petitioner has referred to the following judgments:

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- i. ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Limited: (2016) 10 SCC 458, para 10 & 22;***
 - ii. ***Rishi Mohan Srivastava v. State of U.P. and Anr: 2021 SCC Online All 532, para 21;***
 - iii. ***Som Mittal v. Government of Karnataka: (2008) 3 SCC 753, para 9;***
 - iv. ***G. Sagar Suri & Anr v. State of U.P. & Ors: 2000 AIR SC 754, Para 8 & 9.***

15. Per contra, Mr. S. Sen, learned counsel for the respondent No. 1 has contradicted the contention and the submission of the learned counsel for the petitioner on facts by referring to the Sale Deed dated 15.10.2019, annexed to this petition as Annexure 1, wherein the contents of paragraphs 3, 4, 6 and 7 have been pointed out to show that it is an admitted fact

between the parties that the consideration for the total plot of land is ₹ 2,60,00,000/- (Rupees two crores sixty lakhs) out of which the respondent No. 1 has already paid ₹60,00,000/- (Rupees sixty lakhs) in the year 2012 duly acknowledged receipt by the proforma respondent. Therefore, having already paid rupees sixty crores, the remaining amount to be paid by the respondent No. 1 is ₹ 55,88,423/- (Rupees fifty-five lakhs eighty-eight thousand four hundred and twenty-three). The proforma respondent however at para 7 of the said Sale Deed has acknowledged receipt of another sum of ₹ 2,00,00,000/- (Rupees two crores) only, which in effect is the total consideration paid, including the share of ₹ 1,15,88,423/- (Rupees one crore fifteen lakhs eighty-eight thousand four hundred and twenty-three) paid by the respondent No. 1.

16. To this extent, the learned counsel for the respondent No. 1 has submitted that in this petition, the petitioner has stated that the said Sale Deed is void and voidable as a consequent of subsequent developments, but the fact remains that he cannot deny the authenticity of this document.

17. Coming to the Settlement Agreement dated 13.08.2020, the learned counsel for the respondent No. 1 has submitted that one of the terms of the same is that the petitioner as First Party has agreed to pay a sum of ₹ 1,50,00,000/- (Rupees one crore fifty lakhs) only to the Second Party, who is the respondent No. 1 herein, which is understood to include the original sum of ₹ 1,15,88,423/- (Rupees one crore fifteen lakhs eighty

eight thousand four hundred and twenty-three) which is the share of the respondent No. 1 towards the consideration of the said plot of land of the proforma respondent and which also includes the consideration for the services rendered by the respondent No. 1 as regard the said land deal and again, for compensation for withdrawal from the agreement for sale with Kristina Suchiang (proforma respondent).

18. As to the letter dated 06.04.2021 said to have been issued by the proforma respondent No. 1 to the petitioner which is a confirmation that the proforma respondent has not received any money from the respondent No. 1 amounting to ₹ 1,00,00,000/- (Rupees one crore) being the sale amount of consideration for her land situated at Bishop Cotton Road, Shillong, the learned counsel for the respondent No. 1 has submitted that the contents thereof are not consistent with the fact situation, inasmuch as, the total consideration for the land is ₹ 2,60,00,000/- (Rupees two crores sixty lakhs), the share of the respondent No. 1 is ₹ 1,15,88,423/- (Rupees one crore fifteen lakhs eighty eight thousand four hundred and twenty-three) out of which she has already paid ₹ 60,00,000/- (Rupees sixty lakhs), therefore, the inconsistency here is apparent and for which the petitioner cannot argue that the debt or liability cannot be legally enforceable.

19. Referring to the said confirmation letter of 06.04.2021, wherein the proforma respondent has purportedly informed the petitioner that she did not receive any money from the respondent No. 1 as part of the

consideration for the sale of her land indicated in the Sale Deed of 15.10.2019, the learned counsel for the respondent No. 1 has submitted that reference may be made to the legal notice issued upon the petitioner by the respondent No. 1 which is dated 05.05.2021 and the reply of the petitioner to the same vide letter dated 02.07.2021 which did not mention the said confirmation letter dated 06.04.2021 even though, she was allegedly in possession of the same at the time when the reply dated 02.07.2021 was issued. This, therefore has cast a doubt about the authenticity of the said letter and it could be assumed that the same was never issued by the proforma respondent and that it is a manufactured document.

20. On the basis of the document (confirmation letter dated 06.04.2021) which the petitioner has termed as unimpeachable, this case was set up to scuttle the due procedure of law, whereby the said document has to pass the test of evidence which can only be realised at the trial and hence, this petition is liable to be dismissed as devoid of merits, submits the learned counsel for the respondent No. 1.

21. In response to the case laws cited by the petitioner, the learned counsel for the respondent No. 1 has referred to the same authorities to refute the contention of the petitioner and has submitted that in the case of Sampelly Satyanarayana Rao (supra), at para 15, the Hon'ble Supreme Court has referred to the case of *Suryalakshmi Cotton Mills Ltd v. Rajvir Industries Ltd & Ors: (2008) 13 SCC 678* wherein at para 22 of the same,

when the Hon'ble Supreme Court speaks of documents of unimpeachable character, the said Confirmation Letter issued by the proforma respondent to the petitioner cannot be termed as unimpeachable in the light of the inconsistency evident thereto.

22. The learned counsel for the respondent No. 1 then went on to cite the other paragraphs found in the said Sampelly Satyanarayana Rao case, viz; para 16, 17, 18 and 20 to say that the Hon'ble Supreme Court has held that in dealing with a quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of facts. Yet again, while referring to the case of ***Rangappa v. Sri Mohan: (2010) 11 SCC 441***, it was held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. A similar situation is present in the case of the petitioner herein, inasmuch as, he has not denied that the cheque was issued by him, nor did he denied his signature on it or to the quantum mentioned therein.

23. Relying on the case of G. Sagar Suri (supra), the learned counsel for the respondent No. 1 has referred to para 8 and 9 of the same (which was also relied upon by the petitioner) in which the Hon'ble Supreme Court has held that jurisdiction under Section 482 of the Code is to prevent abuse

of the process of the Court or otherwise to secure ends of justice and in the exercise of the wholesome power under Section 482, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing it to continue would be an abuse of the process of the Court. But that is not the case here as far as the complaint of the respondent No. 1 is concerned as the respondent No. 1 has been able to make out good grounds for sustenance of the said complaint.

24. Again, in support of his case, the learned counsel for the respondent No. 1 has cited the case of ***Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) and Another: 2022 SCC Online SC 513*** para 2, 10, 11, 12, 13, 14, 15, 16, 17 & 18 and has submitted that this case is very relevant to the case in hand as the facts are almost similar.

25. Mr. A.G. Momin submitting on behalf of the proforma respondent has referred to the said Sale Deed dated 15.10.2019 to say that the same has been carefully worded only to safeguard the interest of the respondent No. 1, inasmuch as, reference was made that a sum of sixty lakhs was paid to the proforma respondent by the respondent No. 1 in the year 2012, but the same was not actually paid. Even if one assumes that the said sixty lakhs was paid, as to the remaining share required to be paid by the respondent No, 1, that is, the sum of ₹ 55,88,423/- (Rupees fifty-five lakhs eighty-eight thousand four hundred and twenty-three), the same has also not been paid by the respondent No 1 till date. The confirmation letter

dated 06.04.2021 has been issued in the light of the fact situation, further submits the learned counsel.

26. This Court has given due consideration to the argument of the parties and to the authorities cited. Facts and circumstances have been duly noted on the basis of the submission of the parties and as such, need not be reiterated except if so required. However, the moot issue to be decided here is whether the petitioner is liable to make payment to the respondent No. 1 from the bank account maintained by him in HDFC Bank, Rynjah Branch, Shillong for discharge of any debt or liability. The answer to this question will determine the outcome of this lis.

27. It would not be out of place to reproduce the provision of Section 138 NI Act, 1881 before proceeding further, which provision reads as follows:

“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 provisions 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”.*

28. In the case of Sampelly Satyanarayana Rao (supra) at para 10, the Hon’ble Supreme Court has observed that *“discharge of debt or liability” depends on the nature of the transaction. If on the date of the cheque liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise”.*

29. The petitioner has maintained that since the respondent No. 1 has failed to keep her end of the agreement, that is, to make the necessary payment of ₹ 60,00,000/- (Rupees sixty lakhs) and even the subsequent ₹ 55,88,423/- (Rupees fifty-five lakhs eighty-eight thousand four hundred and twenty-three) to the proforma respondent in terms of the Sale Deed (Sale Agreement) dated 15.10.2019, therefore, the subsequent Agreement between the petitioner and the respondent No. 1 dated 13.08.2020 whereby the petitioner was supposed to pay the respondent No. 1 a sum of ₹ 1,50,00,000/- (Rupees one crore fifty lakhs), the sum of ₹ 30,00,000/- (Rupees thirty lakhs) being part thereof which cheque was attempted to be

en-cashed by the respondent No. 1 and which forms the core dispute in the complaint under Section 138 NI Act, filed by her, cannot be sustained to consider it a debt or a legally enforceable liability. To solidify this contention, the petitioner has specifically referred to the said Confirmation Letter dated 06.04.2021 issued by the proforma respondent to inform him that she has not received any money from the respondent No. 1 as consideration towards the sale agreement in respect of her property.

30. In the case of Som Mittal (supra) para 9 and also the case of G. Sagar Suri (supra) at para 8 and 9, the Hon'ble Supreme Court has indeed laid down the parameters and contours and has cautioned the exercise of power under Section 482 Cr.P.C if applied routinely to a case, except where abuse of the process of the court and miscarriage of justice is apparent.

31. The case of Rathish Babu Unnikrishnan (supra) cited by the respondent No. 1 also speaks about how an application for quashing of a proceeding under Section 138 NI Act can be dealt with in an application under Section 482 of the Code of Criminal Procedure.

32. This Court being made aware of the implication as indicated in the authority cited above, would however observe that in the case in hand, the petitioner has instructed his Bank to stop only after being convinced that the respondent No. 1 has failed to make the necessary payment to the proforma respondent which is intimately linked to his obligation to refund the money to the respondent No. 1. Therefore, one cannot say that the

failure to en-cash the said cheque is because the petitioner has failed to keep his part of the bargain or obligation. Even if the dispute is to be agitated before the Court which has taken up the complaint case of the respondent No. 1, the role and presence of the proforma respondent now becomes necessary, if only to prove or disprove the said Confirmation Letter dated 06.04.2021. In the proceedings before the Trial Court taking up the complaint case of the respondent No. 1, the proforma respondent has not been made a party and therefore, the said Confirmation Letter dated 06.04.2021 cannot be introduced or proved by the maker of the same, particularly in a proceeding under section 138.

33. As noticed above, in the light of the existence (or non- existence) of the said Confirmation Letter, there has arisen the issue as to whether the attempt at encashment of the cheque in question by the respondent No. 1 is towards a legally enforceable debt and liability or not. As observed above, it is only in the presence of the proforma respondent that this question can be answered and this, not being possible in a proceeding under Section 138 NI Act, the alternative left to the parties is to approach a competent civil court for adjudication of this dispute.

34. By doing so, it is not that the respondent No. 1 is totally shut out of her legitimate claim, but the burden will now shift to her to prove that she has indeed satisfied her part of the consideration towards the proforma respondent in terms of the said Sale Deed (Sale Agreement) dated

15.10.2019, following which, the petitioner would then be obligated to refund or satisfy the terms of agreement as stipulated in the Settlement Agreement dated 13.08.2020.

35. In the light of the above observations, this Court is of the considered view that the prayer of the petitioner is justified and that the dispute between the parties cannot be confined only to the proceedings under Section 138 NI Act, but has to be adjudicated before the proper forum. In the peculiar facts and circumstances of the case of the parties, the jurisdiction of the Court under Section 138 NI Act is ousted as the inability of the respondent No. 1 to en-cash the said cheque for a sum of ₹ 30,00,000/- (Rupees thirty lakhs) does not pertain to the discharge, in whole, or in part, of any debt or other liability and hence Section 138 NI Act is not attracted in such case.

36. Accordingly, this petition succeeds and the same is allowed. Consequently, the proceedings in C.R. Case No. 114 (S) of 2021 pending in the Court of the learned Judicial Magistrate First Class, Shillong is hereby quashed.

37. Petition disposed of. No costs.

Judge

Meghalaya
16.12.2022
"D. Nary, PS"