



2025:DHC:6954



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 8th May, 2025

Pronounced on: 18th August, 2025

+ CRL.M.C. 2325/2023 & CRL.M.A. 8757/2023

MR. MANOJ NAGAR

.....Petitioner

Through: Mr. Mayank Kshirsagar, Mr. Akhilesh
Yadav and Mr. Parth Sarath I.,
Advocates

versus

COIM INDIA PVT. LTD.

.....Respondent

Through: Mr. Dinesh Minocha, Mr. Hariday
Minocha and Mr. Ajay Yadav,
Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed seeking the following prayers: -

“In light of the foregoing facts, it is humbly prayed that this Hon'ble Court may be pleased to:



- a) Quash and set aside the complaint bearing CC No. **9656/2019** pending before the Ld. Metropolitan Magistrate, Tis Hazari, New Delhi; and/or
- b) Quash and set aside the Final Order dated 07.01.2020 passed by the Ld. Metropolitan Magistrate Tis Hazari Court Complex, New Delhi in complaint bearing CC No. **9656/2019**,
- c) Pass other and such orders as this Hon'ble Court deems fit in the interest of justice.”

2. The present petition arises out of complaint, **CC No. 9656/2019**, under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, (for short, 'NI Act') filed by the respondent/company against the petitioner. Necessary averments in the complaint filed by the respondent/company are as under: -

“3 . That the Accused is the Sole proprietor of Mans Marketing and incharge for day to day affairs and responsible for conduct of the business of Mans Marketing being its sole proprietor. The Accused is also the signatory of cheque in question.

4. That the Accused approached the Complainant Company and represented that the Accused has been doing his business as Sole Proprietor of Mans Marketing and has experience in sales promotion for various clients and necessary wherewithal in the food packaging industry and have lot of links with various customers in the said industry. The Accused also represented that he could help the Complainant Company with the development of sales in the territory of Indore as the Accused had had its base there for the past so many years and was well connected in the industry circles. Based on the representations and warranties of the Accused, the Complainant Company appointed the Accused as its agent and an 'Agreement with Commercial Agent' dated 01.12.2017 was executed between the Accused and the Complainant, hereinafter referred to as the '**Agreement**'.



5. That as per the terms and conditions of the Agreement, the Accused was required to promote sales of the products of the Complainant Company with the diligence of a good merchant and a responsible businessman. As per terms and conditions agreed with the Accused, the Accused was responsible for regular sales of products of the Complainant Company, timely collection and/payment for the sales made through the Accused to different customers and to make payment to the Complainant.

6. That in furtherance of the said Agreement, the Accused represented to have made the following sales and the goods were accordingly supplied by the Complainant Company as per instructions of the Accused and were delivered to the concerned as per details below: -

S No.	Customer Name	Invoice Date	Invoice No	Amount
1.	Primaflex	17.04.2018	HRFPI1800265	4,09,578/-
2.	Arcox Multipack Private Limited	27.04.2018	HRFPI1800415	5,11,973/-
3.	Packers	04.05.2018	HRFPI1800545	2,04,789/-
Total Amount Payable				11,26,340/-

7. That out of the above, Mr. Manoj Nagar was able to get payment of Rs. 1,11,973/- from Arcox Multipack Private Limited only. No other purchaser has made any direct payment to complainant. I say that the Accused is thus liable to pay the amount of Rs. 10,14,367/- (Rupees Ten lakhs fourteen thousand three hundred sixty seven only). Apart from the above, the Accused is also liable and the Complainant Company is entitled to interest @22% on the aforesaid amount as per terms and conditions of sale.

8. That after lot of follow ups and reminders, as per agreed terms and conditions and in discharge in discharge of part of liability, the Accused made a part payment of Rs.7,00,000/- (Rupees Seven lakhs only) vide Cheque bearing no.249932 dated 16.10.2019 drawn in PNB Bank, Airport Road , Indore Branch with an assurance that the said cheque was good for payment and shall be honoured by its bankers on its first presentation itself by the Complainant Company.



9. That accordingly as per assurance and commitment of the Accused that sufficient funds were available in his bank account to honour the said cheque, the abovementioned cheque for Rs. 7,00,000/- (Rupees Seven lakhs only) vide bearing nO.249932 dated 16.10 .2019 drawn on PNB Bank, Airport Road, Indore Branch was presented for encashment by the Complainant through its banker Bank of India, Kirti Nagar Branch, Delhi. However, to the shock and surprise of the Complainant, the aforesaid cheque for Rs .7,00,000 / - bearing nO.249932 dated 16.10 .2019 drawn on PNB Bank, Airport Road, Indore Branch was returned back unpaid and dishonoured by the bankers of the Accused, with the remarks "**FUNDS INSUFFICIENT**" and an intimation of the same was received by the Complainant vide memo of Bank of India dated 02.11.2019.

11. That since the monies due and payable by the Accused to the Complainant were not paid by the Accused, the Complainant Company got sent a Legal Notice dated 20.11.2019 sent through Speed Post on 21.11.2019 to the Accused under the provisions of section 138 of the Negotiable Instruments Act, 1881 (as amended up to date) through its Advocate . That the said legal notice was duly served upon the Accused on or around 26.11.2019 as is evident from Tracking Report downloaded from the official website of "India Post". The Accused has however, avoided to receive the notice sent at other two addresses of the Accused and as such the Accused has been duly served with the legal notice. However, even after receipt of the said legal notice, the accused neither replied nor made payment as demanded by the said legal notice within stipulated period of 15 days and thus the accused has committed offence punishable under section 138 of the Negotiable Instruments Act (as amended upto date)."

3. Learned counsel for the petitioner has submitted that the proceedings arising out of the complaint case are abuse of the process of the Court inasmuch as the subject cheque was handed over to the respondent as a security at the time of the execution of the agreement in terms of Clause 11.3 of the Agreement dated 01.12.2017 and not in discharge of any existing debt or other liability. It



is the case of the petitioner that no debt or liability was existing against the petitioner from the respondent at the time of the issuance of the subject cheque, and thus, the offence punishable under Section 138 of the NI Act has not been made out in the present case. Reliance has been placed on the judgment of Hon'ble Madras High Court in **Balaji Seafoods Exports (India) rep. by its Director, Chalapathy and Anr. v. Mac Industries Ltd.**¹, wherein it was held that if an undated cheque was issued only as a security and not in discharge of any liability, the same would not draw the liability for the offence punishable under Section 138 of the NI Act. Reliance has also been placed on the judgment of a Coordinate Bench of this Court in **Poonam v. Kotak Mahindra Bank Ltd. & Anr.**². In the said case, the accused had merely stood as a guarantor under the loan agreement and the subject cheque was not issued in discharge of primary liability towards loan, and therefore, could not be prosecuted under Section 138 of the NI Act. Reliance has also been placed on the judgment of a Coordinate Bench of this Court in **M/s Collage Culture & Ors. v. Apparel Export Promotion Council & Anr.**³, to contend that the post-dated cheque which was issued for a debt payable in future upon the occurrence of a contingent event by way of security would not attract liability under Section 138 of the NI Act. Reliance has also been placed on **Indus Airways Pvt. Ltd. v. Magnum Aviation Pvt. Ltd.**⁴, to contend that the criminal liability under Section 138 of the NI Act would be attracted in case of legally enforceable debt or other liability subsisting on the date of drawal of the cheque. Reliance has also been placed on a judgment of Hon'ble Madras High Court in **M/s S. Albert**

¹ 1998 SCC OnLine Mad 704

² 2012 SCC OnLine Del 382

³ 2007 SCC OnLine Del 1407

⁴ (2014) 12 SCC 539



& Company (P) Ltd. v. M/s Sree Meghana Distributors & Ors.⁵, to contend that in similar circumstances, the accused therein who was *del credere* agent of the complainant and had issued a cheque by way of security was acquitted by the Court therein by holding that the cheque issued in such transactions would be in the nature of security and thus, would not attract the liability under Section 138 of the NI Act.

4. It was further submitted that as per Clause 11.3 of the Agreement, it was imperative on the respondent to provide written intimation to the petitioner for the sole purpose of bad credits recovery. However, no intimation was provided by the respondent to the petitioner prior to the presentation of the subject cheque which was in their custody. Reliance has been placed on **Harshendra Kumar D. v. Rebatilata Koley and Ors.**⁶, to contend that this Court in exercise of power under Section 482 of the CrPC can quash the proceedings even in cases wherein, the trial is yet to take place and the matter is at the stage of issuance of summons if materials relied upon by the accused which are in the nature of public documents beyond suspicion show that the accusation against him cannot stand and that it would be travesty of justice if the accused is relegated to trial to prove his defence before the Trial Court.

5. Learned counsel for the petitioner has further submitted that the learned Metropolitan Magistrate has erred in summoning the petitioner in the present

⁵ Criminal Appeal 681 of 2006 decided *vide* judgment dated 29.09.2018 by Hon'ble Madras High Court
⁶ (2011) 3 SCC 351



complaint as the subject cheque was given as security and was not issued in discharge of existing or past adjudicated liability in terms of Section 138 of the NI Act. It is pointed out that the respondent/company had filed two suits, CS(COMM) 239/2021 and 241/2022, under Order XXXVII of the Code of Civil Procedure, 1908, (for short, 'CPC') against the merchants/purchasers of the petitioner for recovery of their respective amounts due towards the respondent. It is submitted that in one of the said suits, CS(COMM) 241/2022, the petitioner stood discharged from liability as his name was removed from the array of parties in the plaint and the said suit was decreed *vide* judgment dated 12.10.2022 and the other suit, CS(COMM) 239/2022, was dismissed as withdrawn as the same was settled between the respondent/plaintiff and defendant Nos. 1, 2 and 3 therein (actual debtors) and the present petitioner was defendant no.4 in the said suit.

6. *Per contra*, learned counsel for the respondent/complainant has submitted that subject cheque was presented for encashment in pursuance of an intimation received from the petitioner *via* email in respect of his liability existing on the date of drawing of cheque as the latter had failed to collect payments and the respondent had raised debit note on 11.10.2019 for Rs.11,26,340/-. He further submitted that the petitioner was appointed as *del credere* agent of the respondent *vide* the agreement dated 01.12.2017 and he had taken responsibilities and guarantees for recovery of the amounts from the buyers, to whom sales were made by him, and in case of default of payments to make good the said payments and therefore, he cannot avoid his obligations as agreed to in the said agreement.



7. It is the case of the respondent that the petitioner had given the said cheque as additional guarantee in respect of payments from customers for the purchase of goods supplied by the respondent and had also given authority to them to deposit the same if he fails in his commitment for payments. Attention of this Court has been drawn towards an email dated 24.12.2018 sent by the petitioner to the respondent wherein the petitioner himself had undertaken that all the overdue payment from his side will be paid till 15th of January and he had also given authority to the respondent to deposit the cheque given by him, in case, he fails in his commitment for the payment of the customers in the said timeline. It is submitted that the subject cheque was presented for encashment after the aforesaid undertaking was given by the petitioner and the same can also be considered as due intimation as contemplated in Clause 11.3 of the Agreement entered into between the parties. Learned counsel has placed reliance on **T.I. and M Sales Ltd. v. CIT**⁷, to contend that a *del credere* agent guarantees to his principal that third persons with whom he enters contracts on behalf of the principal shall pay any sum becoming due thereafter under those contracts and the same shall be due in every case of sale of goods.

8. Learned counsel has further submitted that the learned Metropolitan Magistrate had declared the petitioner as proclaimed offender *vide* order dated 03.04.2023 and a revision against the said order before learned ASJ was filed, however, no stay was granted and the said fact was not disclosed in the pleading

⁷ 1972 SCC OnLine SC Cal 187: (1985) 151 ITR 286



filed before this Court. It is further submitted that even though the suit for recovery was decreed in favour of the respondent, however, the said amount has not been recovered so far. Reliance has been placed on **HMT Watches Ltd. v. MA Abida**⁸, to contend that the question whether the subject cheque was given as security or not or whether there was outstanding liability on the drawer of the cheque towards the complainant is a question of fact which could be determined by the Trial Court after recording evidence of the parties. Reliance has also been placed on **Sunil Todi v. State of Gujarat**⁹, to contend that the presentation of the cheque upon the failure of the buyer to pay is a consequence which would be in the knowledge of the drawer of the cheque and the cheque, as such, would be in such instance mature for presentation as in effect, it was towards a legally enforceable debt or liability. Thus, it is prayed that the present petition is not maintainable at this stage and is to be dismissed with costs. Reliance has also been placed on the following judgments: -

- a) **Credential Leasing & Credits Ltd. v. Shruti Investments & Anr.**¹⁰,
- b) **Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) & Anr.**¹¹,

9. Heard learned counsel for the parties and perused the record.

⁸ (2015) 11 SCC 776

⁹ (2022) 16 SCC 762

¹⁰ 2015: DHC:5015

¹¹ (2022) 20 SCC 661: 2022 SCC OnLine SC 513



10. The issue raised in the present petition is that the subject cheque was given as a security and not in discharge of any legally enforceable debt at the time it was drawn and handed over to the respondent and therefore there can be no prosecution against the present petitioner for the offence punishable under Section 138 of the NI Act.

11. The relevant clause, *i.e.*, 11.3, of the agreement dated 01.12.2017 between the petitioner and the respondent/complainant is as under: -

“LIABILITY FOR THE SOLVENCY OF CUSTOMERS-COLLECTION

11.3 The Agent will be fully responsible in case the customers will be default in payment. In case of non- payment by the customers, the Agent will pay in place of them. On this regards, Agent will provide to the Principal, security cheques for an amount of INR 50,00,000/- (fifty lacs only), that the Principal will keep in his custody and that will be used by the Principal, at its own discretion, only after written intimation to the Agent and for the sole purpose of bad credits recovery. Bad credits will be consider all the outstanding amount that crossed 180 days from date of invoice.

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12. In this context, it will be relevant to examine the communication *via* email on 24.12.2018 and 04.01.2019 between the petitioner and respondent/company, which have been reproduced thus: -



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Cell - +91-9312041205

Email: manish.yadav@colimgroup.com

novacote
flexpack

From: mansmarketing@yahoo.com
Date: 2018-12-24 13:48
To: [Manish Yadav \[Colm India\]](#)
Subject: Outstanding

Dear Sir,

I am feeling sorry for the delay of payment which is happening in Arcox,Packers,Prima Flex.

I commit that payment of all overdue will be finished from my side maximum till 15 th of January and also giving authority to COIM to deposit my cheque if I fail in my commitment for the payment of mentioned customer in this time line.

Requested kindly send material of Advance Roto Flex and Shanti Pack.

Advance Roto Flex is running well and his outstanding also will be done within day or two.

Thanking you and awaiting your early dispatches.

Yours sincerely

For,Mans Marketing

Manoj Nagar

[Sent from Yahoo Mail on Android](#)

True Copy

dminocha..

(emphasis supplied)



Yadav Manish

From: Manish Yadav [Coim India] <manish.yadav@coimgroup.com>
Sent: Friday, 4 January, 2019 4:10 PM
To: mansmarketing@yahoo.com
Cc: Hitesh Gupta [Coim India]
Subject: Re: Outstanding

Dear Mr. Manoj
 We have noted your commitment for 15 Jan,2019 and as per your commitment,if payment will not be received from customer till 15 Jan,we will deposit your cheque in Bank.

We are sending details of overdue of various customer for your reference-

Customer	Total Outstanding	Overdue
Arcox	Rs. 511,973.00	More then 120 days
PrimaFlex	Rs. 409,568.00	More then 120 days
Packers	Rs. 1,126,340.00	More then 120 days
Advance Rotoflex	1- Rs.319,786.00	More then 120 days
	2- Rs.309,006.00	More then 90 days
	3- Rs.11,33,024.00	More then 60 days

Advance Rotoflex is also moving in same direction like others and this account overdue is also increasing and payment not received even you have given the commitment to get the payment in a day or two on dt 24/12/2018.

Please comment.

Awaiting your reply.
 Thanks.

**Please note of change in email address:
 New valid address is : manish.yadav@coimgroup.com**

Best Regards

Manish Yadav

Manager -Technical &Sales



colm INDIA PRIVATE LTD,

Plot No, 25 & 26, Sector-17,

HSI IDC, Footwear Park,

Bahadurgarh (Haryana)-124507

Phone-+91-1276-224807



In the aforesaid email dated 24.12.2018 sent by the petitioner to the respondent, there is a clear unambiguous consent to deposit the cheque, if he fails to pay the amount within the timeline given by him, *i.e.*, 15th January, 2019. Subsequently, the email dated 04.01.2019, sent by the respondent to the petitioner to the effect that if payment is not made till 15.01.2019, they shall deposit his cheque in the bank.

13. Reliance placed by learned counsel for the petitioner on **Balaji Seafoods Exports rep. by its Director, Chalapathy and Anr. (*supra*)** is misplaced as in the present case there was a clear consent, as pointed out hereinabove, from the petitioner to deposit the subject cheque. Similarly, in **Poonam (*supra*)**, the petitioner therein had given the subject cheque as a guarantor of the loan agreement and was not the principal loanee of the concerned bank. In **M/s S. Albert & Company (*supra*)**, the case of the complainant was that the accused therein had taken the loan which was rebutted during the course of the trial by demonstrating that the subject cheque has been given security with respect to some other transaction, and therefore, the same is not applicable in the facts of the present case. In **M/s Collage Culture (*supra*)**, the subject cheque had been issued not for existing due but by way of security, however, in the present case there was specific consent given by the drawer of the cheque, petitioner, to present the same for encashment.

14. Learned counsel for the petitioner had place reliance on the judgment of the Hon'ble Supreme Court in **Indus Airways Pvt. Ltd. (*supra*)** to argue



that a cheque which was given as a security cannot be considered to be given in discharge of legally enforceable debt.

15. The Hon'ble Supreme Court in **Sunil Todi (*supra*)** while dealing with the aforesaid judgment and as also other judgments with respect to the issue, as noted hereinbefore, has observed and held as under: -

“17. The issues which arise for our consideration are as follows:

17.1. (i) Whether the dishonour of a cheque furnished as a “security” is covered under the provisions of Section 138 of the NI Act.

18. The first submission which has been urged on behalf of the appellants is that a complaint under Section 138 of the NI Act would not be maintainable since the cheque of Rs 2.67 crores was issued by way of a security and, is thus not against a legally enforceable debt or liability. The appellant has placed reliance on the judgment of a two-Judge Bench of this Court in *Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.* [*Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] The issue in that case was whether the postdated cheques which were issued by the appellants who were purchasers, as an advance payment in respect of purchase orders, could be considered to be in discharge of a legally enforceable debt or other liability and whether the dishonour of the cheques amounted to an offence under Section 138. The appellants had placed two purchase orders for the supply of aircraft parts with the first respondent and had issued two postdated cheques as advance payment. The supplier received a letter from the purchasers cancelling the purchase and requesting the return of both the cheques. Following a notice by the suppliers, a complaint was instituted under Section 138 upon which cognizance was taken by the Magistrate and summons were issued. The High Court allowed a petition under Section 482CrPC and set aside [*Magnum Aviation (P) Ltd. v. State*, 2010 SCC OnLine Del 2910] the order issuing process by construing the expression “discharge of any debt or other liability” in Section 138 holding



that there must be a liability at the time of issuing the cheque [**“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.*Explanation.*—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”] . In appeal, R.M. Lodha, J. writing for a two-Judge Bench allowed the appeal [It was held that the view taken by the Andhra Pradesh High Court in *Swastik Coaters (P) Ltd. v. Deepak Bros.*, 1996 SCC OnLine AP 1003 : (1997) 89 Comp Cas 564; the Gujarat High Court in *Shanku Concretes (P) Ltd. v. State of Gujarat*, 1999 SCC OnLine Guj 366 and the Madras High Court in *Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd.*, 1998 SCC OnLine Mad 704.] observing : (*Indus Airways case*[*Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] , SCC pp. 542-43, para 9)

“9. The Explanation appended to Section 138 explains the meaning of the expression “debt or other liability” for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence



under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.”

19. Drawing the distinction between civil and criminal liability, it was observed that if there is a breach in the condition of advance payment, it would not incur criminal liability under Section 138 of the NI Act since there is no legally enforceable debt or liability at the time when the cheque was drawn. The Court held that if at the time when a contract is entered into, the purchaser has to pay an advance and there was a breach of that condition, the purchaser may have to make good the loss to the seller, but this would not occasion a criminal liability under Section 138. The issuance of a cheque towards advance payment at the time of the execution of the contract would not—in the view which has been adopted in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]*—be considered as a subsisting liability so as to attract an offence under Section 138 upon the dishonour of the cheque.

20. A later judgment of a two-Judge Bench in *Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd. [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149]* considered the decision in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]*. In *Sampelly [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149]*, the appellant was the Director of a company which was engaged in power generation, while the respondent was a government enterprise



engaged in renewable energy. The respondent agreed to advance a loan for setting up a power project and the agreement envisaged that postdated cheques towards payment of instalments of the loans would be given by way of security. The cheques having been dishonoured, complaints were instituted under Section 138 which led to quashing [*Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*, 2014 SCC OnLine Del 2932 : (2016) 198 Comp Cas 683] petitions filed before the High Court. The submission which was urged before this Court was that dishonour of the postdated cheques given by way of security did not amount to a legally enforceable debt or liability under Section 138 *in praesenti*. This Court held, after advertent to the decision in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] that if on the date of the cheque, a liability or debt exists or the amount has become enforceable, Section 138 would stand attracted and not otherwise. The decision in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] was distinguished in *Sampelly [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*, (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149] on the ground that in that case, the cheque had not been issued for discharge of a liability but as advance for a purchase order which was cancelled. On the other hand, in *Sampelly [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*, (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149], the cheque was for the repayment of a loan instalment which had fallen due. The Court noted that though the deposit of cheques towards the repayment of instalments was described as a security in the loan agreement, the true test was whether the cheque was in discharge of an existing enforceable debt or liability or whether it was towards an advance payment without there being a subsisting debt or liability.

21. Besides the distinguishing features which were noticed in *Sampelly [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*, (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149], there was another ground which weighed in the judgment of this Court. The Court adverted to the decision in *HMT Watches Ltd. v. M.A. Abida [HMT Watches Ltd. v. M.A. Abida*, (2015) 11 SCC 776 : (2015) 4 SCC (Cri) 552] to hold that whether the cheques were given as security constitutes the defence of the accused and is a matter of



trial. The extract from the decision in *HMT Watches [HMT Watches Ltd. v. M.A. Abida, (2015) 11 SCC 776 : (2015) 4 SCC (Cri) 552]*, which is cited in the decision in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]* is thus : (*HMT Watches case [HMT Watches Ltd. v. M.A. Abida, (2015) 11 SCC 776 : (2015) 4 SCC (Cri) 552]*, SCC p. 779, para 10)

“10. ... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court [*M.A. Abida v. HMT Watches Ltd., 2014 SCC OnLine Ker 3842*] should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties.”

22. In a more recent judgment of a two-Judge Bench in *Sripati Singh v. State of Jharkhand [Sripati Singh v. State of Jharkhand, (2022) 18 SCC 614 : 2021 SCC OnLine SC 1002]*, an order of the Magistrate taking cognizance and issuing summons on a complaint under Section 420IPC and Section 138 of the NI Act was challenged before the High Court. There was a transaction between the second respondent and the complainant pursuant to which the appellant had advanced sums of money. Several cheques were handed over but they were dishonoured on presentation. The High Court allowed [*Hitesh Kumar R. Jain v. State of Jharkhand, 2019 SCC OnLine Jhar 3033*] the petitions. An appeal was filed before this Court. Before this Court, the appellant urged that a cheque issued towards discharge of the loan and presented for recovery could not be construed as a security for the transaction. In appeal, this Court noted that there were four loan agreements under which the second respondent agreed to pay a total sum of Rs 2 crores and six cheques were issued as security. The High Court had held [*Hitesh Kumar R. Jain v. State of Jharkhand, 2019 SCC OnLine Jhar 3033*] that since under the loan agreement the cheques were given by way of security, the complaint could not be maintained.



24. The Court observed : (Sripati Singh case [Sripati Singh v. State of Jharkhand, (2022) 18 SCC 614 : 2021 SCC OnLine SC 1002] , SCC para 21)

“21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. “Security” in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.”

25. Moreover, as the Court explained : (Sripati Singh case [Sripati Singh v. State of Jharkhand, (2022) 18 SCC 614 : 2021 SCC OnLine SC 1002] , SCC para 22)

“22. When a cheque is issued and is treated as “security” towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as “security” cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences



that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the NI Act. Therefore, there cannot be a hard-and-fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an “on demand promissory note” and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as “security” the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.”

The complaint, insofar as it invoked the provisions of Section 138 of the NI Act, was accordingly restored to the Judicial Magistrate to proceed in accordance with law.

26. In the present case, the PSA between the parties envisaged that the second respondent would supply power to the company of which the appellants are Directors or as the case may be, Managing Director. The agreement postulated that payment for the power supplied would be made by means of LCs. Though, the LCs were provided, they were allegedly not in a form acceptable to the bankers of the second respondent. The appellants do not dispute that prior to the termination of the agreement, power was supplied for a period of three months to the company. In other words, the agreement for the supply of power was acted upon and power was supplied to by the second respondent and consumed by the company.

29. Thus, the term “debt” also includes a sum of money promised to be paid on a future day by reason of a present obligation. A postdated cheque issued after the debt has been incurred would be covered by the definition of “debt”. However, if the sum payable depends on a contingent event, then it takes the colour of a debt only after the contingency has occurred.



Therefore, in the present case, a debt was incurred after the second respondent began supply of power for which payment was not made because of the non-acceptance of the LCs. The issue to be determined is whether Section 138 only covers a situation where there is an outstanding debt at the time of the drawing of the cheque or includes drawing of a cheque for a debt that is incurred before the cheque is encashed.

30. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment. In Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] , advance payments were made but since the purchase agreement was cancelled, there was no occasion of incurring any debt. The true purpose of Section 138 would not be fulfilled, if “debt or other liability” is interpreted to include only a debt that exists as on the date of drawing of the cheque. Moreover, Parliament has used the expression “debt or other liability”. The expression “or other liability” must have a meaning of its own, the legislature having used two distinct phrases. The expression “or other liability” has a content which is broader than “a debt” and cannot be equated with the latter. In the present case, the cheque was issued in close proximity with the commencement of power supply. The issuance of the cheque in the context of a commercial transaction must be understood in the context of the business dealings. The issuance of the cheque was followed close on its heels by the supply of power. To hold that the cheque was not issued in the context of a liability which was being assumed by the company to pay for the dues towards power supplied would be to produce an outcome at odds with the business dealings. If the company were to fail to provide a satisfactory LC and yet consume power, the cheques were capable of being presented for the purpose of meeting the outstanding dues.”

(emphasis supplied)



16. Thus, in the present case as well, the subject cheque, although, may have been given at the time of entering into agreement in pursuance of the aforesaid clause, however, on the date when the said cheque was presented for drawal, there was a legally enforceable liability towards the petitioner. The aforesaid email dated 04.01.2019 can also be considered an intimation in terms of the aforesaid clause for depositing of cheque if payment is not made by 15.01.2019.

17. Insofar as the contention of learned counsel for the petitioner with respect to disposal of the recovery suits, CS(COMM) 239/2021 and 241/2022 filed by the respondent/company, on account of same being settled and decreed without the petitioner being arrayed as party respectively, is concerned, it is the case of the respondent that the disputes have been settled between the merchant buyers which were represented by the petitioner. However, the payment/outstanding dues which were partially paid by the said merchant buyers to the petitioner is still enforceable *qua* him.

18. Be that as it may, as noted hereinabove, the Hon'ble Supreme Court in **Sunil Todi** (*supra*) had also observed that the issue with respect to any defence being taken on the ground of cheques issued as a security is a matter of defence which needs to be taken by the accused during the course of the trial. The petitioner can during the course of trial demonstrate that there was no money due towards the respondent and therefore, the subject cheque which was given as security could not have been presented for encashment. This Court in



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exercise of its jurisdiction under Section 482 of the CrPC cannot decide the disputed question of facts. In these circumstances, no case grounds for quashing of the present complaint, **CC No. 9656 of 2019**, and impugned summoning order dated 07.01.2020 are made out at this stage.

19. In view thereof, the present petition is dismissed and disposed of accordingly.

20. Pending applications, if any, also stand disposed of accordingly.

21. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or on the pending trial against the present Petitioner and any observations made herein are only for the purpose of the present petition.

22. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

23. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J.

AUGUST 18, 2025/bsr/ns