

**IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE – 03 (NEW DELHI)
PATIALA HOUSE COURTS : NEW DELHI**

Cr. Revision No. 742/2019

**1. M/s Shree Tyres,
120/1/1, Saikar Complex,
Baner Mahalunge Road,
Opp. Ganaraj Mangal Karyalya,
Baner, Pune (Maha_-411045**

**2. Sarang Ramesh Gupta,
Partner M/s Shree Tyres,
R/o Arunali Apartment, A-6,
Rambaug Colony, Paud Road,
Pune (Maha) 411038
Presently at New Zealand**

**3.Devendra Kanhaiyalal Newaskar,
Partner M/s Shree Tyres,
R/o Flat no. 101/102, Manibhadra Apartment,
613/A-3, Near Parsi Agyari, Nana Peth,
Pune (Maha) 411038**

....Revisionists

Versus

1. State,

**2. M/s Bridgestone India Pvt. Ltd.,
404, Fourth Floor,
Solitaire Plaza, Sikanderpur,**

CR No. 742/19

(Parveen Singh)

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ASJ-03/NDD/PHC:24.07.2020

**M.G Road, Gurugram (Hr)
Through Its Attorney Holder,
Mr. Subhash Kumar Chillar**

...Respondents

Date of Institution : 01.11.2019
Date of Arguments : 23.07.2020
Date of Pronouncement : 24.07.2020

JUDGMENT

The present revision u/s 397/399/401 Cr.P.C has been filed for setting aside order dated 06.06.2019 passed by Ld. MM (NI Act)-03 whereby the ld MM had dismissed the application for discharge of accused/ revisionists under section 138 Negotiable Instruments Act (NI Act).

2. As per the complaint u/s 138 NI Act, the brief facts are that, the accused/revisionists were the dealers of the complainant/ respondent no. It was further alleged that in order to discharge their liability, the revisionists issued cheque no. 152142 dated 18.01.2017 for an amount of Rs.44,18,896/- drawn on Canara Bank, Pune. However, on being presented for encashment, the cheque got dishonoured with the reason “cheque irregularly drawn/ amount in words and figures differ.” It is further alleged that thereafter, despite issuance of legal demand notice, the revisionists failed to make the payment of the cheque amount.

3. Hence, the respondent filed a complaint u/s 138 NI Act against the revisionists.

4. After taking the cognizance, Ld.MM issued summons to the

revisionists. Thereafter, revisionists moved an application seeking discharge. However, vide impugned order dated 06.08.2019, Ld. MM, by citing the judgment of Hon'ble Apex Court in **M/s Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375**, had dismissed the application for discharge and ordered the framing of notice u/s 251 Cr.P.C. Hence, the present revision petition.

5. The grounds taken in the revision petition are, that the impugned order is wrong on facts and in law. The ld. trial court had wrongly appreciated the facts and circumstances as observed and incorporated by Hon'ble Apex Court in **Laxmi Dyechem (supra)**. Ld. trial court failed to appreciate the position of law as described under N.I Act that Chapter XVII deals with penalty in cases relating to dishonor of cheques for insufficient funds in the accounts. A further ground taken is, that in view of section 251 Cr.P.C, when an accused appears before the trial court in a summons case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge sheet/ complaint and consider the evidence in order to come to conclusion, whether or not, commission of any offence is disclosed and if the answer is in affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether the pleads guilty, otherwise he is bound to discharge the accused as per section 239 Cr.P.C. In this regard, reliance has been placed on the judgments passed by Hon'ble High Court of Delhi in **S.K Bhalla v. State & Ors, 2011 Legal Eagle 600** and **Tanmay Mukhopadhyay v. Stat & Ors. 2015 Legal Eagle 2176**.

6. A further ground taken is, that the Id. trial court failed to appreciate section 6 of the NI Act which defines the cheque and also failed to appreciate section 5 of the NI Act which defines the Bill of Exchange. Ld. trial court failed to appreciate section 18 of the NI Act which defines the circumstances where amount is stated differently in figures and words. As per section 18 of NI Act, if the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Ld. trial court was wrong in concluding that the cheque in question failed to clear the test as defined u/s 18 of NI Act. The trial court was wrong in coming to conclusion that there is prima facie evidence available on record against the revisionist to frame notice u/s 138 NI Act. The impugned order suffers from patent illegality and non application of mind.

7. I have heard the arguments advanced by Sh. Sanjay Bhargav, Id. counsel for the revisionists and Sh. M.P Upadhyay, Ld. counsel for respondent no. 2.

8. Ld. Counsel for the revisionists has contended that the prosecution u/s 138 NI Act can only be launched and continued on dishonour of a cheque. For an instrument to be a cheque, it has first to satisfy the conditions of being valid under Negotiable Instruments Act (NI Act). He has further contended that the cheque in question was not a valid instrument as per sections 5 and 6 of NI Act. The requirement of a valid cheque as per these two sections is, that it has to be a bill of exchange drawn on a specific banker for a certain amount of money to be paid to a

certain person. He has further contended that in the present case, the amount cannot be ascertained from the cheque and that being the case, it is not a valid negotiable instrument. He has further contended that he admits that merely the difference in the amount in figures and words will not invalidate the cheque because as per section 18 of the NI Act, the amount can still be ascertained on the basis of the amount written in words. However, in the present case, the amount written in words is absurd and in no manner can help in ascertainment of the cheque amount. The amount in figures has been written as “Rs.44,18,896/-“ whereas, the amount in words is written as “Forty Four Lacs Eighteen Lacs Eight Hundred and Ninety Six only”. He has therefore contended that the document which was presented before the bank was not a cheque or a negotiable instrument within the definition of the Negotiable Instruments Act and the offence u/s 138 NI Act could only have been attracted if a cheque is dishonoured. In the present case, as the instrument presented was not a valid cheque, it cannot be said that an offence u/s 138 NI Act was committed. He has further contended that the learned Trial Court had wrongly applied the judgment of Hon’ble Supreme Court in **Laxmi Dychem (supra)**. He has further contended that even at the stage of section 251 Cr.P.C, it was the duty of the court to carefully go through the record, the evidence, the allegations and then, to arrive at a conclusion whether or not a commission of any offence was disclosed. The Magistrate failed to apply her mind to find out whether, the basic ingredients of the NI Act to make the alleged document a valid cheque were fulfilled or not. He has therefore contended that the order of the learned trial

court deserves to be set aside and revisionists/ accused deserve to be discharged.

9. Per contra, ld. Counsel for the respondent no. 2 has contended that the revisionists cannot take advantage of their own wrong when with malafide intention, the revisionists had filled an incorrect and incoherent amount in the cheque while describing the amount in words. He has further contended that a valid legal notice was served upon the revisionists/ accused and despite that, the revisionists/ accused neither paid the amount, nor offered to issue a fresh cheque after making rectification and recording the correct amount in words and therefore, the judgment of Hon'ble Supreme Court in **Laxmi Dyechem (supra)** squarely covers this case and there is no illegality or infirmity in the order of the learned trial court.

10. I have considered the rival submissions and perused the record very carefully.

11. In the present case, a very peculiar situation has arisen where the very factum of the instrument being a valid cheque has been challenged.

12. In order to decide the controversy at hand, it is first necessary to go through the relevant provisions of the NI Act in order to find out what is a cheque as per the NI Act. Section 6 of the NI Act defines cheque as under:-

“Cheque”. —A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. Explanation I.....

(a).....

(b)

Explanation II.

13. Therefore, in view of section 6 of the NI Act, a cheque is a bill of exchange which is drawn on a specified banker and is payable otherwise than on demand. Therefore to be a cheque, an instrument has to satisfy the conditions of being a bill of exchange first and thereafter, if it is a valid bill of exchange and directed to a banker, it will become a cheque.

14. The definition of bill of exchange is given in section 5 of the NI Act, which reads as under:-

“Bill of exchange”.—A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. A promise or order to pay is not “conditional”, within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain. The sum payable may be “certain”, within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due. The person to whom it is clear that the direction is given or that payment is to be made may be a “certain person”, within the meaning of this section and section 4, although he is mis-named or designated by description only.

15. Thus, as per the aforesaid definition, a bill of exchange has to be : (1) an instrument in writing, (2) containing an unconditional order signed by the maker, (3) directing a certain person to pay, (4) a certain sum of money and, (5) only to, or to the order of, a certain person or to the bearer of the instrument.

17. The scanned image of the cheque in question and dishonoured memo are underneath.

[illegible]

18. A look at the aforesaid cheque reflects that this an instrument in writing and therefore satisfies the condition no. 1 as above. It is an unconditional order signed by the maker and thus, it satisfies the condition no. 2 as above. A direction has been given to a specified banker i.e Canara Bank, Kothrud Branch, Pune and thus it satisfies the condition no. 3 as above. However, when it comes the condition no. 4 i.e. direction should be to pay a certain sum of money, the instrument is ambiguous. As can be seen above, the amount written in figures is “44,18,896/-“ and the amount written in words is “Forty four lacs eighteen lacs eight hundred and ninety six only”. Coming to the condition no. 5, the document also satisfies the condition no. 5 as above because it has been directed to be paid to Bridgestone India Pvt. Ltd i.e. a certain person.

19. As discussed above, there could have been no dispute about this instrument being a cheque within the definition of section 6 of the NI Act but for its failure to meet condition no. 4 i.e. the certainty of the amount to be paid.

20. However, as per the scheme of the NI Act 1881, an instrument does not become invalid merely because the amount ordered to be paid is stated differently in figures and in words. Section 18 of the NI Act provides the recourse to be taken in such eventuality. Section 18 of the NI Act is under:-

Section 18. Where amount is stated differently in figures and words:- If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

22. Therefore, as per the provisions of section 18 NI Act, merely because the amount to be paid as stated in figures and words is different, a cheque or an instrument does not become invalid and the amount stated in words shall be considered to be amount undertaken or ordered to be paid.

23. In the usual course of things, if a cheque has ambiguity with regard to the amount, it can be settled by falling back upon the amount written in words and that amount shall be considered to be the amount undertaken or ordered to be paid through that instrument or cheque. The effect of section 18 NI Act is that in case of amount is stated differently in words and figures, the amount stated in figures would be immaterial and it is only the amount stated in words that has to be considered. In this regard, Hon'ble Jammu and Kashmir High Court in **Jammu & Kashmir Bank v. Qazi Taj Din, 1954 Jammu & Kashmir 56 (P.B)** way back in 1954 had held as under:-

5. From the peremptory nature of [Section 18 of the Negotiable Instruments Act](#), it is clear that when a difference arises between the sum expressed in words in the body of the instrument and that mentioned in figures, the amount mentioned in words will be taken to be the sum for which the instrument was made payable. In the pronote the amount undertaken to be paid is mentioned in words so that there may be no danger of its being altered subsequently. The mandatory nature of S. 18 gives no choice to the Courts to give preference to the sum mentioned in figures over the amount mentioned in words. The sum denoted by words in the pronote is to be taken to be the amount payable and no evidence can be adduced to show that in fact the sum mentioned in figures was paid and not the amount stated in words.

24. Further the Hon'ble Jammu & Kashmir High Court had quoted Halsbury's Laws of England, Vol. 2 page 468, which is as under:-

“It is customary for bills and notes to have the amount written in figures at the top of the instrument & in words in the body of the instrument. Where there is a discrepancy between the two the sum denoted by the words is the amount payable and evidence cannot be adduced to show that in fact there was a mistake made in omitting words in the body of the instrument.

The figures at the top are not in fact a necessary part of an instrument, though they are commonly placed there. It would seem that their original purpose was that the amount of the instrument might strike the eye immediately and be a note, index, or summary of the contents.”

25. Hon’ble Madras High Court in **Kishan Lal v. Jograj Bhantia, 1987 SCC Mad 141** had taken a similar view while relying upon the judgment of Hon’ble Jammu & Kashmir High Court in **Jammu & Kahsmir Bank (supra)**.

26. The Hon’ble Kerala High Court in **Capital Syndicate v. Jameela, 2001 (44) SCL 220 Ker** had quoted with approval the following portion of Bhashyam and Adiga, on **N.I. Act** 4th Edition:

It is obvious, therefore, that the first and essential requisite is certainty. This means certainty (1) as to the person to make the payment, (2) as to the person to receive it, (3) as to the time and place of payment, (4) as to the conditions of liability, and (5) as to the amount to be paid.

This and the following sections endeavour to define and enforce these certainties not in such an exact and technical way as would only embarrass the transaction of business but substantially in a perfect and practical way"

27. Therefore, the legal preposition that emerges is, that an instrument to become a bill of exchange or cheque, as per sections 5 & 6 of the NI Act, has to have a certainty not only with regard to the person who is directed to pay the amount; not only with regard to the person who is

directing such payment; not only with regard to the person who has been directed to make the payment but also, the amount directed to be paid has to be certain. In case any of these definitive directions are ambiguous or uncertain, the instrument will not be a valid bill of exchange and thus, will not be a cheque. In the present case, there is an uncertainty with regard to the amount which has been ordered to be paid through the instrument in question. However, in view of section 18 of NI Act, it can still be a valid instrument if, on the basis of the amount written in words, a certainty can be arrived at with regard to the amount ordered to be paid. Surprisingly, in the present case, the amount written in words is “forty four lacs eighteen lacs eight hundred and ninety six only.”. This amount cannot be said to be a certain amount of money as it is an absurdity which makes that amount unquantifiable. It is correct that if the amount written in figures when read had made a sense, it would have become a certain amount and could have satisfied the condition of certainty as to the amount as required by section 5 of NI Act. In the present case, even section 18 of NI Act cannot be applied to the instrument in question. This is because of the absurdity of the amount as mentioned in words in the instrument. Once there is a difference in the amount in the instrument as written in words and figures, the amount written in figures becomes immaterial and cannot be resorted to find what was the intended sum of money ordered to be paid through such instrument. This view is fortified by the judgment of Hon’ble Jammu & Kashmir High Court in **Jammu & Kashmir Bank (supra)** wherein the Hon’ble High Court had held that section 18 is mandatory in nature and it gives no choice

to the courts to give preference to the sum mentioned in figures over the amount mentioned in words and that, no evidence can be adduced to show that in fact the sum mentioned in figures was to be paid and not the amount stated in words. Meaning thereby, once there is a difference between the amount stated in words and figures, in view of the provisions of section 18 of the NI Act, the amount stated in figures becomes immaterial and it is only the amount stated in words that has to be considered.

28. Applying this principle to the present case, I find that the amount stated in words is absurd and thus the certainty which is required by sections 5 & 6 of the NI Act with regard to the amount to be paid is missing in this instrument. That being the case, this instrument was not a valid cheque when presented before the bank.

29. The question which now arises is, if such an instrument was presented and dishonoured, would it amount an offence u/s 138 of the NI Act?

30. Section 138 of the NI Act reads 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 provisions of this Act, be punished with imprisonment for ¹⁹ [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,²⁰ [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.

31. The answer to the question posed above is clearly evident from a bare reading of section 138 of the NI Act. The offence u/s 138 NI Act is stated to be committed by a person when a cheque issued by him, in discharge of a legally recoverable debt or liability, is dishonoured and such dishonour is on account of insufficiency of funds or on account that it exceeded arrangements with the bank. Further, the drawer of the cheque despite receipt of a legal notice within the stipulated time, fails to pay the amount of the cheque.

32. It is to be seen that the entire section 138 of NI Act talks about a cheque. The word ‘cheque’ used in section 138 of NI Act carries the same meaning as defined u/s 6 of the NI Act. Thus, the offence u/s 138 NI Act can only be said to have been committed if, the instrument that was presented and dishonoured was a cheque as defined by section 6 of the NI Act.

33. In the present case, as discussed above, the instrument which was presented to the bank was not a valid cheque for lack of certainty as to the amount that was ordered to be paid and the bank had also refused to honour this instrument only on the ground that cheque was irregularly drawn / amount in words and figures differed.

34. However, there has been a contention that has been raised on behalf of the respondent no. 2 that the present case is squarely covered by the judgment of Hon'ble Supreme Court in **Laxmi Dyechem (supra)**. He has contended that revisionists/accused had issued this cheque with malafide intention and giving a relief to the revisionists/ accused on the ground of certainty would defeat the object of the Act. He has further contended that despite the receipt of legal notice, the revisionists/ accused neither paid the amount nor offered to issue a fresh cheque and even did not reply the notice. Therefore, the judgment of Hon'ble Supreme Court in **Laxmi Dyechem (supra)** is applicable to this case and the Ld. MM had rightly dismissed the application of the revisionists/ accused seeking discharge from the case.

35. I have carefully considered this submission and gone through the judgment of Hon'ble Supreme Court in **Laxmi Dyechem (supra)**.

36. The judgment of **Laxmi Dyechem (supra)** and various judgments cited therein dealt with situations where a cheque would be dishonoured for the reasons of insufficiency of funds, exceeding arrangement with the bank, stopping of payment of the cheque by the

drawer, closing of account after the cheque had been drawn, signatures mismatch etc. However, the applicability of Section 138 NI Act on the basis of dishonor of an invalid instrument / cheque was neither considered nor decided upon. The legal proposition that has emerged from the judgment of **Laxmi Dyechem (supra)** and the judgments cited therein appears to be that, where the instrument issued is otherwise a valid cheque and has been dishonoured for the reasons which could not have been known or noticed by the receiver of the cheque, the drawee would be still liable u/s 138 NI Act provided all other requirements for prosecution under this section has been met. For example, the receiver of a cheque cannot be expected to know whether on the date of presentation of the cheque, there will be sufficient amount in the account of the drawee or not; the receiver of the cheque cannot be expected to know whether the drawee has appended his correct signatures on the cheque or not; the receiver of the cheque cannot be expected to know that the drawee after issuing the cheque will issue the order to stop the payment of the cheque; the receiver of the cheque cannot be expected to know that the drawee after issuing the cheque will close the bank account upon which the cheque had been drawn etc etc. Therefore, in order to protect the rights of the receiver of a cheque in good faith, the scope of section 138 of NI Act with regard to the dishonour of a cheque had been expanded. However, the fact remains that the instrument presented has to be a valid cheque as defined by section 6 of the NI Act and it only thereafter, if the cheque is dishonoured for any reason, that section 138 NI Act will come into picture.

37. Another noticeable fact is, that the cheque was invalid on the face of it because of uncertainty as to the amount written in words. It is not the case that the receiver could not have known the defect of the cheque when he received it or, where due to some future act on the part of the drawee that the cheque was dishonoured. Thus, the judgment of **Laxmi Dyechem (supra)** cannot come to the aid of the respondent in this case.

38. Coming on to the argument of Id. Counsel for the respondent no. 2 with regard to issuance of legal notice and non compliance of the same, I find that this argument also does not hold much water. I say so because, for a notice u/s 138 NI Act to fulfill the requirements of that section, the primary condition that has to be satisfied is that the dishonoured instrument was a valid negotiable instrument, which could be considered to be a cheque within the definition under section 6 of NI Act.

39. In the present case, as instrument presented was not a cheque with the definition of section 6 of NI Act, a notice for subsequent dishonour of such instrument will not impose any liability upon the drawee either for non compliance or for non issuance of a fresh cheque.

40. In view of my above discussion, I find that the material presented before the trial court was sufficient to conclude that as the instrument on the basis of which complaint was filed was not a valid cheque within the definition of section 6 of NI Act, no notice u/s 251 Cr.P.C could have been framed against the accused/ revisionists. I accordingly find the order of the Id. Trial court, whereby the application of the revisionists/

accused seeking discharge was dismissed and notice for the offence u/s 138 NI Act was ordered to be framed, cannot be sustained. The impugned order is accordingly set aside. The revisionists stand discharged. File be consigned to record room.

Announced in open court
today on 24.07.2020.
(This order contains 18 pages
and each page bears my signatures.)

(Parveen Singh)
ASJ-03, New Delhi Distt.,
Patiala House Court, N. Delhi.