

S.E. Investments Ltd. vs Prem Singh on 29 June, 2016

IN THE COURT OF SHRI GAGANDEEP JINDAL: MM (N.I.ACT):
SOUTH-EAST DISTRICT, SAKET COURTS COMPLEX: NEW DELHI

S.E. Investments Ltd. Versus Prem Singh
CC No. 3108/15
U/s 138 Negotiable Instruments Act, 1881

1. Unique Identification : 02406R0210552013
Number of the case
2. Name of the complainant : M/s S. E. Investments Ltd
having its regd. office at:
S-547, 2nd Floor,
School Block, Main Road,
Shakarpur, Delhi-92
Through its AR
Amit Chaudhyary.
3. Name of the accused , : Prem Singh
parentage & residential
address S/o Sh.Chhavi Ram Singh
Digner, Block Shamsabad,
Tehsil Fatehabad, District-
Agra-283125 (UP)
4. Offence complained of or : U/s 138 of Negotiable
proved Instruments Act, 1881
5. Plea of the accused : Pleaded not guilty and
claimed trial
6. Final Judgment/order : Acquitted
7. Date of judgment/order : 29.06.2016

Date of Institution	: 30.08.2013
Date of Reserving Judgment/Order	: 06.06.2016
Date of Pronouncement of Judgment/Order	: 29.06.2016

JUDGMENT

1. By way of the present Judgment, I shall dispose off the present complaint filed by M/s S. E. Investment Ltd S. E. Investments Ltd . Vs Prem Singh page 1 of 11 (hereinafter referred to as 'complainant') against Prem Singh(hereinafter referred to as 'accused') u/s 138 of Negotiable Instruments Act, 1881 r/w Section 142 Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act' in short).

2. Accused has furnished bail bond u/s 437A Cr.P.C.

3. It is submitted by the complainant that it has been carrying on financing business like Corporate loans, Term loans, Auto Loans, Loan against property, SME Trade & other. Accused had taken loan from complainant company on executing Loan Cum Guarantee Agreement dated 08.01.2013. It is further submitted that pursuant to the aforesaid loan cum guarantee agreement dated 08.2013,

accused was to repay the said loan as per terms and conditions therein but he has failed to comply with the same. That on repeated demands of the complainant company for repayments of outstanding dues, accused signed and issued a cheque bearing no. 589134 for Rs. 26,63,037/- dated 06.05.2013 drawn on Canara Bank, Digner, Shamshad, Agra-283125 (UP) in favour of the complainant towards discharge of his existing debts and liabilities. On the presentation of the abovesaid cheque by the complainant company through its banker, it was dishonoured and returned unpaid on 16.05.2013 with the remarks " Insufficient Funds". Thereafter, complainant got issued legal demand notice dated 06.06.2013 through registered post and AD Card but accused failed to make the S. E. Investments Ltd . Vs Prem Singh page 2 of 11 payment against the dishonoured cheque within 15 days from the date of service of legal demand notice. Hence, the present case was filed.

4. Notice u/s 251 Cr.P.C. was framed against the accused to which he pleaded not guilty and claimed trial.

5. To prove its case, complainant company has examined Sh.

Amit Chaudhary who filed his evidence by way of affidavit Ex. CW1/1 and relied upon the following documents:-

(a) Copy of Extraction of Board Resolution dated 22.12.2009 Ex. CW1/A.

(b) Original cheque in question Ex. CW1/B.

(c) Original returning memo Ex. CW1/C.

(d) Office copy of legal demand notice Ex. CW1/D.

(e) Postal receipts and tracking reports are Ex. CW1/E and Ex. Cw1/F.

(f) Copy of loan cum guarantee agreement Ex. CW1/G

(g) Copy of letter dated 10.12.2012 Ex. CW1/H.

(h) Copy of Voucher dated 08.01.2013 Ex. CW1/I

(i) Copy of statement of account Ex. CW1/J. CW-1 was discharged after cross-examination.

6. In the statement of accused recorded u/s 313 Cr.P.C., all the incriminating evidence were put to the accused to which accused has stated that he issued blank signed cheque to the complainant at the time of taking employment with the complainant company and denied the receipt of legal demand S. E. Investments Ltd . Vs Prem Singh page 3 of 11 notice.

7. Accused examined himself U/s 313 Cr. P.C as defence witness DW-1 and Mr. Surender Singh as DW-2. Both witnesses were discharged after cross-examination.

8. Final arguments on behalf of both parties heard.

9. The Ld. counsel for the complainant argued that accused was appointed by the complainant company for disbursal of loan to the local villagers and it was the duty of the accused to collect the loan amount from them. But he did not deposit the loan amount with the complainant company after collecting from the loanees and therefore, he wrote a letter Ex. CW1/H to convert the said amount of Rs. 20.25 lakhs into his personal loan and executed loan agreement Ex. CW1/G. He further argued that accused failed to honour the cheque in question which was issued by him for repayment of the loan amount. He further argued that accused failed to raise the probable defence to disprove the case of complainant and to rebut the presumption U/s 139 NI Act. Therefore, accused be convicted for the offence U/s 138 NI Act.

10. Ld. Counsel for the accused argued that accused was mere employee of the complainant company and complainant company obtained the signatures of the accused on certain blank papers and forced the accused to issue a cheque in order to join his duties. Accused was in need of job and therefore, he fulfilled all the formalities as asked by the complainant company. Accused was not given any salary during his employment with the complainant company. He further S. E. Investments Ltd . Vs Prem Singh page 4 of 11 argued that accused did not take any loan from the complainant company and complainant company misused the documents which were obtained from the accused and this fact is apparent from the date on which the stamp papers for loan document was purchased. The said stamp paper was purchased on 06.03.2010 when accused joined his job in the complainant company whereas the loan agreement was executed on 08.01.2013. He further argued that accused is not liable to pay any amount to the complainant company and hence, accused should be acquitted for the offence u/s 138 of Negotiable Instruments Act.

11. The Ld. counsel for complainant during the arguments admitted that accused was employee of the complainant company. CW-1 in his affidavit stated that the accused was working on agency basis called as Field Manager for complainant company and his work was to select appropriate and illegible borrowers of disbursal of loan and was responsible to recover the installments of loan. The complainant did not file any appointment letter wherein terms and conditions of employment were mentioned. The complainant neither filed any loan document vide which the loan was granted to the borrowers at the instance of the accused nor filed any details of mode of payment of loan amount to such borrowers. The complainant company is a registered company under Companies Act, 1956 and must have been maintaining its account books as per accounting standards. The complainant company did not file any such books of account to show that the what loan amount was S. E. Investments Ltd . Vs Prem Singh page 5 of 11 disbursed to the borrowers and what amount was due to such borrowers. The complainant has alleged that the accused failed to deposit the amount of Rs. 20.25 lakhs which was collected from the borrowers. The complainant company did not examine any such borrower to prove that they made the payment to the accused for repayment of loan. All these deficiencies in the evidence of the complainant raises the probable doubt on the case of the complainant.

12. During arguments, ld. counsel for the complainant heavily relied upon the loan agreement Ex. CW1/G. The said loan agreement was allegedly executed on 08.01.2013 whereas the stamp papers on which the loan agreement was executed, was purchased on 06.03.2010. The complainant failed to explain why the stamp papers for the loan agreement were purchased almost three years prior to the execution of loan documents. Rather it supports the defence raised by the accused that the complainant obtained his signatures on blank papers at the time of his appointment in the company on 07.04.2010.

13. The Ld. counsel for complainant argued that by execution of loan agreement Ex. CW1/G and letter Ex. CW1/H, the contract between accused and complainant was novated and relied upon the judgments Ratna Commercial Enterprises Ltd Vs. Vasu Tech Ltd Manu/DE/3168/2009 and Indian Bank Vs. K. Natraja Pillai Manu/SE/441/1993.

14. The complainant did not file any document with regard to the first contract executed between complainant and S. E. Investments Ltd . Vs Prem Singh page 6 of 11 accused i.e appointment letter of accused and the loan documents executed by the original borrowers with the complainant company in order to explain the terms and conditions of the previous contract. Moreover, as per Section 25 of Indian Contract Act, any contract executed without consideration is void. In the present case, the complainant failed to prove that accused collected Rs. 20.25 lakhs from the borrowers as discussed above. Hence, the complainant has failed to prove the consideration qua the loan agreement Ex. CW1/G. It is not case of the complainant that loan amount of Rs. 20.25 lacs was credited into account of accused. Therefore, the loan agreement is a void contract for want of consideration.

15. The accused has alleged that the complainant company obtained his signatures by misrepresentation in garb of fulfillment of formalities with regard to the employment of accused with the complainant company. It has already been discussed in para no. 12 of this judgment that the complainant failed to explain why the stamp papers were purchased on 06.03.2010 while the loan agreement was executed on same stamp papers on 08.01.2013. Therefore, it is proved that the consent of accused was obtained by misrepresentation. Consequently, the contract i.e loan agreement between accused and complainant is voidable as per Section 19 of Indian Contract Act.

16. Even if for the sake of arguments, it is presumed that complainant converted the amount of Rs. 20.25 lakhs into loan at the request of the accused. Then the complainant S. E. Investments Ltd . Vs Prem Singh page 7 of 11 failed to explain how the cheque amount of Rs. 26,63,037/- was calculated because the loan agreement for Rs. 20.25 lakhs was executed on 08.01.2013 whereas the cheque in question of Rs. 26,63,037 was presented on 16.05.2013. The complainant failed to explain how the liability of Rs. 20.25 lakhs became Rs. 26,63,037/- mere in five months. The complainant simply filed a statement of account Ex.CW1/J. The said statement of account Ex. CW1/J is admissible in evidence for want of certificate U/s 65B of Indian Evidence Act. The reliance can be placed upon the judgment in the case of "Anvar P.V. Vs. P.K. Basheer", 2014 (10) SCC 473 in this regard.

17. The Hon'ble High Court of Delhi in M/s Alliance Infrastructure Project Pvt. Ltd. and Ors. Vs Vinay Mittal Crl. M.C. No.2224/2009 dated 18.01.2010 has held as under:-

"8. The question which comes up for consideration is as to what the expression "amount of money" means in a case where the admitted liability of the drawer of the cheque gets reduced, on account of part payment made by him, after issuing but before presentation of cheque in question. No doubt, the expression "amount of money" would mean the amount of the cheque alone in case the amount payable by the drawer, on the date of presentation of the cheque, is more than the amount of the cheque. But, can it be said the expression "amount of money" would always mean the amount of the cheque, even if the actual liability of the drawer of the cheque has got reduced on account of some payment made by him towards discharge of the debt or liability in consideration of which cheque in question was issued. If it is held that the S. E. Investments Ltd . Vs Prem Singh page 8 of 11 expression "amount of money" would necessarily mean the amount of cheque in every case, the drawer of the cheque would be required to make arrangement for more than the admitted amount payable by him to the payee of the cheque. In case he is not able to make arrangement for the whole of the amount of the cheque, he would be guilty of the offence punishable under Section 138 of Negotiable Instruments Act. Obviously this could not have been the intention of the legislature to make a person liable to punishment even if he has made arrangements necessary for payment of the amount which is actually payable by him. If the drawer of the cheque is made to pay more than the amount actually payable by him, the inevitable result would be that he will have to chase the payee of the cheque to recover the excess amount paid by him. Therefore, I find it difficult to take the view that even if the admitted liability of the drawer of the cheque has got reduced, on account of certain payments made after issue of cheque, the payee would nevertheless be entitled to present the cheque for the whole of the amount, to the banker of the drawer, for encashment and in case such a cheque is dishonoured for want of funds, he will be guilty of offence punishable under Section 138 of Negotiable Instrument Act. 9. I am conscious of the implication that the drawer of a cheque may make payment of a part of the amount of the cheque only with a view to circumvent and get out of his liability under Section 138 of Negotiable Instrument Act. But, this can easily be avoided, by payee of the cheque, either by taking the cheque of the reduced amount from the drawer or by making an endorsement on the cheque acknowledging the part payment received by him and then presenting the cheque for encashment of only the balance amount due and payable to him. In fact, Section 56 of Negotiable Instrument Act specifically provides for an endorsement on Negotiable Instrument, S. E. Investments Ltd . Vs Prem Singh page 9 of 11 in case of part-payment and the instrument can thereafter be negotiated for the balance amount. It would, therefore, be open to the payee of the cheque to present the cheque for payment of only that much amount which is due to him after giving credit for the part-payment made after issuance of cheque. The view being taken by me was also taken by a Division Bench of Kerala High Court in Joseph Sartho vs. Gopinathan Nair, 2009 (2) Crimes 463 (Kerala). As noted by the Hon'ble Supreme Court in Rahul Builders vs. Arihant Fertilizers & Chemicals And Another, (2008) 2 SCC 321, Negotiable Instruments Act envisages application of the penal provisions which needs to be construed strictly. Therefore, even if two views in the matter are possible,

the Court should lean in favour of the view which is beneficial to the accused. This is more so, when such a view will also advance the legislative intent, behind enactment of this criminal liability".

18. In the present case also, the accused has raised the defence that he issued the blank signed cheques for security purpose at the time of joining his job in the complainant company. The complainant is authorised to fill the contents of the cheques issued by the accused as per the provisions of section 20 of NI Act. But, the complainant has to prove the liability to the tune of cheque amount to held the accused liable u/s 138 NI Act. As such, the above mentioned observation of Hon'ble High Court of Delhi in the case of M/s Alliance Infrastructure Project Pvt. Ltd. and Ors. Vs Vinay Mittal (supra) has to apply squarely in the present situation. Once the actual liability is proved to be less than the amount for which the cheque has been presented to the bank, the aforesaid judgment has to be applied. At the S. E. Investments Ltd . Vs Prem Singh page 10 of 11 time of presentation of cheques in question, the complainant claimed the entire cheque amount i.e. Rs. 26,63,037/- in the present case. If for the sake of arguments, the liability of accused is presumed as per the loan agreement i.e Rs. 20.25 lakhs. The liability of the accused will be less than the cheque amount. The complainant has failed to explain how the alleged amount of Rs. 20.25 lacs became Rs. 26,63,037/- mere in four months. Therefore, the legal demand notice was not a valid notice and would not fasten any criminal liability on account of its non-compliance as observed by the Hon'ble Supreme Court of India in the case titled as K.R. Indira Vs. Dr. G. Adi Narayana, 2003 (3) JCC (NI) 273.

19. Conclusion:

In view of the aforesaid findings, the court is of the considered opinion that accused is able to adduce a probable defence in his favour and successfully rebut the presumption u/s 139 of Negotiable Instruments Act. The onus to prove the legal liability of the accused shifts back to the complainant, which the complainant has failed to discharge. Hence, accused Prem Singh is acquitted for the offence u/s 138 N.I. Act.

Announced in the open court (Gagandeep Jindal) on 29.06.2016 MM(N.I. Act):SED:

Saket Courts, New Delhi S. E. Investments Ltd . Vs Prem Singh page 11 of 11