

GAHC010020022017



2024:GAU-AS:12870

**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Crl.Pet./301/2017**

M/S. G.O.B.ENTERPRISE and ANR.

REP. BY ONE OF ITS PARTNER NAMELY SRI CHAKRA DHAR DAS HAVING ITS OFFICE AT GAURAB NAGAR, WARD NO. 24, T.R. PHUKAN ROAD, EAR BONGAIGAON POLICE STATION P.O. BONGAIGAON, DIST. BONGAIGAON, ASSAM PIN - 783380.

2: SRI CHAKRA DHAR DAS  
S/O LT. NARAYAN CHANDRA DAS R/O VILL- CHITKAGAON  
HIRAPARA  
P.O. CHAPRAKATA  
P.S. BONGAIGAON  
DIST. BONGAIGAON  
ASSAM  
PIN - 78338

VERSUS

PROGRESSIVE MOTORS  
REP. BY ITS ATTORNEY SRI NABIN CHANDRA PHUKAN JOYNAGAR,  
BELTOLA, GUWAHATI -28, DIST. KAMRUP M, ASSAM

**Advocate for the Petitioner : MR G BAISHYA, MR. A HASAN,MS. B BORA**

**Advocate for the Respondent : MR. A BHATTACHARYA,**

**BEFORE**

**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the Petitioners : Mr. G. Baishya, Advocate.

For the Respondent : Mr. A. Bhattacharya, Advocate.

Date of Hearing : 27.11.2024

Date of Judgement : 18.12.2024

**JUDGMENT & ORDER (CAV)**

1. Heard Mr. G. Baishya, learned counsel for the petitioners. Also heard Mr. A. Bhattacharya, learned counsel for the respondent.
2. The present application is filed under Section 482 read with Section 397 and 401 of the Code of Criminal Procedure, 1973 assailing an order dated 16.06.2016 passed by the learned Judicial Magistrate First Class, Kamrup (M), Guwahati, whereby cognizance of offence under Section 138 of the Negotiable Instruments Act, 1881 was taken in Complaint Case No. 208<sup>C</sup>/2016. The further challenge is an order dated 30.03.2017 passed by the learned trial court, whereby a petition registered as Petition No. 9456 dated 30.03.2017 preferred by the accused petitioner seeking dismissal of the complaint case on the ground of pendency of a civil suit filed by the accused was rejected. Yet another prayer made in the petition is for quashment of the entire proceeding.
3. Mr. G Baishya, learned counsel for the petitioner submits that the actual amount of legally enforceable due has not been disclosed, though the complainant had made a vague statement that cheques were issued against legally enforceable debt. Therefore, in absence of such details, no case under Section 138 of NI Act, is made out and accordingly, the proceeding be set aside and quashed.

4. Referring to the para 8 of the complaint, Mr. Baishya, learned counsel for the petitioner submits that though it is an admitted position that two machines were sold, however, the complainant have failed to make a mention what was the total sale consideration of the two stone crusher machines and what is the amount that had already been paid and what is the actual legal due. In absence of such disclosure, it cannot be said that a case under Section 138 of N.I Act is made out.
5. According to him, this case do not relate to single cheque rather the cheques involves are 11 numbers of cheques. Therefore, it is not discernible which cheque is against what liability.
6. Referring to initial deposition filed through an affidavit in opposition, Mr. Baishya, argues that from the initial deposition also it is not disclosed what is the actual amount due and whether any part of the alleged due was paid and what is the remaining amount, though in the initial deposition it is also admitted that there were two machines, however, nothing is discernible, against which machine the amount was due.
7. Referring to the pleaders notice issued by the complainant, Mr. Baishya further argues that such notice also lacks the aforesaid particular, which is necessary to proceed under Section 138 of the NI Act.
8. Referring Section 139 of NI Act, Mr. Baishya, learned counsel for the petitioner argues that Section 139 of NI Act merely raises a presumption in regard of law, however, it is incumbent upon the complainant to lay the foundation that there is a legally enforceable debt which is not available in the present case and therefore, the learned Magistrate ought not to have

issued the process. In this regard, Mr. Baishya, learned counsel places reliance on the decision of the Hon'ble Apex Court in the case of **Krishna Janardhan Bhat –Vs- Dattatraya G. Hegde** reported in **2008 4 SCC 54.**

9. Per contra, Mr. Bhattacharya, learned counsel for the respondent referring to the paragraph 4 of the complaint submits that paragraph 4 clearly discloses the factum of purchase of mobile stone crusher equipment by the petitioner from the complainant.
10. Referring to paragraph 5, Mr. Bhattacharya, learned counsel submits that it is clearly stated in the said paragraph that in discharge of legally enforceable debt, the accused No. 2 in the capacity of the partner of the accused No. 1 firm issued 11 numbers of cheques in favour of the complainant. He further contends that cheques numbers were also mentioned and the amounts of the 9 cheques were also mentioned and therefore, it cannot be said that the complaint has not disclosed the amount of legally enforceable debt. Referring to paragraph 6, he further submits that the said statement clearly discloses that the cheques were presented in the Bank and returned memo was issued on 07.11.2015 intimating the complainant by the Bank that the cheques have been returned unpaid for insufficiency of fund in the account of the accused and therefore, in the aforesaid factual backdrop, it cannot be said that no case is made out.
11. Mr. Bhattacharya learned counsel for the respondent argues that when prima facie case of commission of offence under Section 138 Act is made out from bare perusal of the complaint as well as statement of the

witnesses recorded, this court may not like to interfere and quash the proceeding under Section 138 NI Act, 1881 inasmuch there is a presumption against the accused under Section 139 of the Negotiable Instrument Act, 1881.

12. This Court has given anxious consideration to the argument advanced by the learned counsel for the parties. Also perused the materials available on record.
13. There are three essential conditions for invoking provisions under Section 138 NI Act. The said cheque is to be presented within its period of validity, on dishonour, a demand of payment is to be made by the complainant and when the accused fails to pay the amount within a period of 15 days of receipt of such demand. It is important that the prosecution is to be launched by filing the complaint within the limit of 30 days starting from the period when cause of action arises. In the case in hand, no disputed as regard any of the aforesaid pre requisite has been raised.
14. Section 139 of the NI Act provides for a presumption to the effect that the holder of the cheque had received the cheque in question towards discharge of liability of the drawer, either in whole or in part. In the case in hand and as recorded hereinabove, the argument for quashment of the complaint revolves around the existence of legally enforceable debt and non-disclosure of the details of such legally enforceable debt. However, in para 4 and 5, the complainant has specifically stated that the cheques were issued against discharge of liability of enforceable debt. The petitioner complainant is having all liberty to establish non existence of a debt or liability either through conclusive evidence that the cheques in question

were not issued towards the discharge of debt or liability or through adducing circumstantial evidence with a standard of preponderance of probability.

15. It is well settled that the presumption enables the holder of the cheque to show a prima-facie case and such presumption shall survive before the trial court only when the contrary not having proved to the effect that the cheques in question were not issued for a consideration or discharge of any existing or future debt or liability. In the case in hand, neither the signature nor the issuance of the cheque has been disputed. The entire defence as recorded hereinabove can be established or the plea taken can be established by adducing rebuttal evidence inasmuch accused can place reliance on the material adduced by the complainant to rebut that actual liability was not disclosed and it is vague.
16. It is by now well settled that the accused can undoubtedly place reliance not only on the complaint's lacuna or material but can also adduce positive evidence and take his defence under Section 313 Cr.P.C. to rebut the presumption. The pendency of the civil case, with the allegation that the defective machines were delivered, that the complainant is not liable to pay in view of deficiency etc. can be matter of such defence of the accused.
17. This court in exercise of its jurisdiction under Section 482 Cr.P.C. cannot make conclusive determination on the aforesaid factual aspect and defence as urged by Mr. Baishya learned counsel for the petitioner, more particularly, in absence of any uncontroverted material before this court.
18. It is equally well settled that the power of High Court under Section 482 of

Cr.P.C. to quash complaint and criminal proceeding can be exercised where it is a clear abuse of the process of the court, when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable and when the facts disclosed in the complaint if taken into its face value discloses commission of no offence etc.

19. In the case in hand, this court does not find any of such prerequisite after going through the complaint. In the case in hand, this court is of the unhesitant view that the necessary factual foundation to take cognizance under Section 138 of the NI Act has been laid in the complaint. This court is also of the unhesitant opinion that merely for the reason that the detail of enforceable debt has not been stated in the complaint, the complaint cannot be quashed, more particularly, when a specific statement have been made at paragraph 4,5 and 6 as regards factum of purchase of mobile stone crusher equipments, issuance of cheque for discharge of legally enforceable liability, the amount of the cheque and the total amount of the alleged due. It cannot also be said that the complaint is bereft of even the basic facts, which are absolutely necessary for making an offence under Section 138 of the NI Act.
20. That being the position, this court is of the view that the argument advanced by Mr. Baishya, learned counsel lacks substance and the learned Magistrate has rightly issued the process and the learned trial court was also correct in his decision not to entertain the petition No. 9456 dated 30.03.2017.
21. Accordingly, for the reason recorded hereinabove, this court finds no merit

in this petition to persuade it to exercise its power under Section 482 Cr.P.C. to quash the proceeding of Complaint Case No. 208<sup>C</sup>/2016 under Section 138 of the NI Act. Accordingly, the present criminal petition stands dismissed. Interim order, if any, stands vacated. The learned Magistrate shall now proceed with the case.

22. While parting with the records, it is made clear that the observation made in this order is for the purpose of determination of the present case only and the same shall not be treated as a comment on the merit of the claims of the parties and the learned trial court shall decide the matter as per law without being influenced by any of the observation made in this order.

**JUDGE**

**Comparing Assistant**