

<u>Serial No. 01</u> <u>Supplementary</u> <u>List</u>
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HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 16 of 2021 with
Crl.Petn. No. 18 of 2021

Date of Decision: 13.05.2022

HDFC Bank Ltd. Mawlai Nonglum Branch & Anr.	Vs.	Shri Baklai Siej & Anr.
HDFC Bank Ltd. Shillong Branch & Anr.	Vs.	Shri Baklai Siej & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. M. Smith, Adv.
For the Respondent(s)	:	None appeared.

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

JUDGMENT AND ORDER

1. Two similar petitions under Section 482 Cr.P.C have been preferred before this Court by the HDFC Bank Ltd. Mawlai Nonglum Branch, Shillong along with the Branch Manager of the said bank and another by the HDFC Bank Ltd. Shillong Branch, Police Bazar, Shillong also along with the Branch Manager of the said bank. The grievance is

directed against a common order dated 16.12.2020, passed by the Court of the learned Judicial Magistrate First Class, (JMFC) Shillong which is impugned in both the petitions, it is therefore deemed fit and convenient that the two petitions may be taken up together and to be disposed of by this common judgment and order.

2. The respondent No. 1 has filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 primarily against the respondent No. 2 for an alleged case of cheque bouncing, which cheque for ₹ 1,00,000/- (Rupees one lakh) only dated 27.10.2020 bearing No. 000014 drawn on HDFC Bank, Mawlai Nonglum Branch was issued to him by the respondent No. 2 and on being presented at the bank of petitioner No. 2, in Crl. Petn. No. 18 of 2021 on 27.10.2020, the bank had accordingly transferred the fund to the respondent No. 1's account on 29.10.2020.

3. The respondent No.1 had then visited the bank of the respondent No. 2, that is, HDFC Bank, Police Bazar Branch, Shillong, it was found that the said amount of ₹ 1,00,000/- (Rupees one lakh) only has been reverted back to the bank account of respondent No. 2 herein.

4. Being aggrieved by the alleged action of the respondent No. 2 as well as the petitioner No. 2 herein, the respondent No. 1 has filed a complaint under Section 142 read with Section 138 of the Negotiable Instruments Act before the Court of the Chief Judicial Magistrate, Shillong with a prayer to initiate action against the accused persons therein under the said provisions of the Negotiable Instruments Act.

5. The complaint was registered as C.R. Case No. 182(S) of 2020 and the learned JMFC on perusal of the statement of the respondent No. 1/complainant has directed that summons be issued to the accused persons therein, which included the petitioner No. 2 respectively in both the abovementioned petitions.

6. Being highly aggrieved and dissatisfied with the said order dated 16.12.2020, the petitioners have approached this Court by way of the said abovementioned petitions with a prayer to quash the criminal proceedings against them.

7. Heard Mr. M. Smith, learned counsel for the petitioner who has submitted that on admission of the petitions, this Court has caused notice to be issued upon the respondents therein, however inspite of being served with the notice, the respondents have failed to appear before this Court on several dates and accordingly on prayer made, this Court vide order dated 29.04.2022 has directed that these matters shall be heard ex-parte as against the respondents herein.

8. Mr. Smith has further submitted that the dispute involved is with regard to the alleged dishonour of a cheque said to have been issued by the respondent No. 2 i.e Shri Rohit Kachari in favour of the respondent No.1 Shri Baklai Siej. However, on the cheque being presented at the bank on 03.11.2020, it was found that there is no money in the account of the respondent No. 2. The dispute therefore is basically between the respondent No. 1 and the respondent No. 2. The petitioners being the bank has no

connection whatsoever with the said dispute, but the petitioner bank has been unnecessarily made as one of the parties in the said dispute.

9. Again, Mr. Smith has submitted that the provision of Section 138 N.I. Act has no relevance or application, as far as the petitioners herein are concerned and therefore, this is a fit case for quashing of the proceedings qua the petitioners. In this regard, the case of *Alka Khandu Afhad v. Amar Syamprasad Mishra & Anr: 2021 SCC Online SC 189*, paragraphs 14 & 16 has been referred to in support of the case of the petitioner. It is submitted that this Court may be pleased to allow the petitions and to set aside and quash the proceedings before the Court of the learned JMFC, Shillong as regard the petitioners herein.

10. The argument of the learned counsel for the petitioners have been duly considered. What is undisputed in this case is that a complaint has been filed by the complainant/respondent No. 1 against the respondent No. 2 for an alleged dishonour of a cheque, however the said complainant has also made the petitioner No. 1/HDFC Bank a co-accused in the said complaint. The complaint is primarily under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881. Facts and circumstances leading to the filing of the said complaint have been noted above.

11. At this juncture, it would be proper to look at the provision of Section 138 N.I. Act, the same reads as follows: -

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account

for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”*

12. The essential ingredients of the offence can be said to be the following:-

- (i) that a cheque was drawn by a person on an account maintained by him for payment of money to another for the discharge of any debts or liabilities;
- (ii) that the said cheque has been presented to the bank of the drawee within a period of three months;
- (iii) that the cheque was returned by the bank unpaid due to

insufficiency of funds or that it exceeds that amount arranged to be paid from that account by an agreement made by the bank.

- (iv) that the payee makes a demand for the payment of the money from the drawer of the said cheque, such demand being made within fifteen days from the date that said cheque was refused to be honoured; and
- (v) that the drawer fails to make payment to the payee within fifteen days from the date of receipt of the notice.

13. From the above, what can be observed is that for an offence under Section 138 to be made out a cheque has to be issued by the account holder under his name and signature. It is clear that only the holder of the account on which the cheque is drawn can be made liable and such culpability cannot be extended to others except as provided under Section 141 N.I. Act which deals with offences by and on behalf of the company or partnership, where the signatory to the cheque may be a Director of the company or a Partner of a partnership firm.

14. In the case of *Alka Khandu Afhad* (supra), the Hon'ble Supreme Court at paragraph 16 has observed that only a person who is the signatory to his cheque and such cheque having been returned by the bank unpaid can be said to have committed an offence under Section 138 N.I. Act. This section does not speak about joint liability, even in case of a joint liability, in case of individual persons, a person other than a person who has drawn a

cheque on an account maintained by him cannot be persecuted for an offence under Section 138 N.I. Act, unless the bank account is jointly maintained and that he was a signatory to the cheque.

15. In the present case, the petitioner/HDFC Bank has been made a party by the complainant/respondent No. 1 where no role can be attributed to the bank as far as the issuance or the dishonour of the cheque in question is concerned. The bank is only the custodian of the money of the customers and has to comply with the instructions of such customers. In case of insufficiency of funds, the bank is only to report the same and as such, cannot by any stretch of the imagination be liable for any act of the customer who has issued the cheque which was later dishonoured.

16. Viewed thus, this Court finds that the learned Judicial Magistrate First Class, Shillong has failed to appreciate the facts and the provisions of law and has unnecessarily put the petitioner to great hardship by issuing of process. In this regard the Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors: (1998) 5 SCC 749** at paragraph 28 has observed as follows: -

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of

preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.

17. In the light of the above, the petitions under consideration finds merit before this Court and the same is accordingly allowed. Consequently, the proceeding as against the petitioner/HDFC Bank in C.R. Case No. 182(S) of 2020 under Sections 138 and 142 N.I Act, 1881 pending before the Court of the learned JMFC, Shillong is hereby set aside and quashed. It is made clear that the Court may proceed against the accused No. 1 therein in accordance with law.

18. Petitions disposed of by this common judgment and order. No cost.



Judge

Meghalaya

13.05.2022

"N.Swer, Stenographer"