

SCC. NO.984/2019

Murlidhar Vrs. Sarpach & another.

ORDER BELOW EXH. 29

1. This is an application filed by accused No.02 for deleting his name and insert the name of present secretary. But application is strongly opposed by the complainant by filing his say.

2. Perused the application and say. Perused the record. Heard learned advocate Shri. Undal for the accused/applicant and learned advocate Shri. Rathi for the complainant. Learned advocate Shri. Undal argue that the cheque in question was returned unpaid for the reason drawer's signature difference. Therefore, offence u/s. 138 of Negotiable Instrument Act does not attract. In support of his submission he relied on the judgment of Hon'ble Apex Court in Case of Vinod Tanna & another Vs. Zaheer Siddiqui & others reported in 2003(1) MHLJ 456. He further submitted that the cheque was issued as per government rules. After filing of the present complaint accused No.02 was transferred at Village Ichori and Motsavanga. At present Belkhede Madam has working as secretary of village panchayat Pimpri. Thus, he prayed for allowed the application and to delete his name. On the other hand, learned advocate Shri. Rathi submitted that there is no provision for deleting the name of the accused. The successor in office is not liable for criminal action for the act committed by predecessor. He relied on the judgment of Hon'ble Apex Court in case of Laxmi Dyechem Vs. State of Gujarat & others reported in 2013(1) Bom.C.R. 813 and judgment of the Hon'ble Bombay High Court in case of Saroj Kishorilal Banarasi Vs. Gandhi Sales Corporation, Nagpur reported in 2018 DGLS (Bom.) 2023 and submitted that even the signature of the drawer the cheque does not match, section 138 of the Negotiable Instrument Act would be attracted. He prayed for rejection of the application.

3. Admittedly, the cheque in question was returned unpaid for

the reason drawers signature difference. In case of Vinod Tanna (Cited Supra) Honb'ble Apex Court held that Section 138 of the Act makes it crystal clear that unless the conditions precedent mentioned therein are satisfied, the said penal provision cannot be attracted.

4. The Hon'ble Apex Court in case of Laxmi Dyechem (Cited Supra) referred its earlier judgment of Vinod Tanna and observed that the above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (Supra) that the expression " amount of money is insufficient" appearing in section 138 of the Act is a genus and dishonour for reasons such "as account closed" "payment stopped" "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of section 138 of the Act.

5. Further in case of Saroj Kishorilal Banarasi (Cited Supra) Hon'ble Bombay High Court relied on the judgment of the Hon'ble Apex Court in case of Laxmi Dyechem and held that if the cheque is dishonoured on the ground that signature of the drawer of the cheque does not match the specimen signature available with the bank, the penal provisions of Section 138 of the Act would be attracted.

6. Thus, the division bench of the Apex Court held that signature of the drawer do not match the signature's on the cheque would also constitute a dishonour within the meaning of Section 138 of the Act. Therefore, at this stage, drawer's signature mismatch is not the ground to

delete the accused No.02.

7. Pertinently, the complaint u/s.138 of Negotiable Instrument Act is criminal in nature. Thus, the procedure as contemplated in the Code of Criminal Procedure is applicable. There is no provision in the Code of Criminal Procedure for deleting the name of the accused. Thus, in any view of the matter, this court is not having any power or authority to delete the name of the accused and against whom demand notice has been issued. Inherent powers are not conferred on this court to quash the order of issuance of process either by the Code of Criminal Procedure, 1973 or by the Negotiable Instrument Act. Accordingly, application is not tenable. It is liable to be rejected. Hence, following order is passed.

ORDER

Application is rejected.

Sd/-

(Subhash D. Tare)

Judicial Magistrate F.C., 2nd Court,
Mangrulpir.

Date- 01/08/2024

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/ Order are same word to word as per the original order.

Name of Court :- 2nd Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.

Presiding Officer :- Subhash D. Tare

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Date of Judgment :- 01.08.2024

Judgment/Order signed :- 01.08.2024
by the presiding officer
on

Judgment/Order :- 02.08.2024
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