

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**
Judgment on: 10.03.2010
C.R.R. No. 583 of 2010

Debi Chakraborty
versus
State of West Bengal & Anr.

Point:

QUASHING: Payee has been intimated beforehand not to present the cheque for encashment - Filling up of the cheque by other person- Allegation discloses civil dispute – Whether proceeding can be quashed- Code of Criminal Procedure, 1973 S. 482- Negotiable Instruments Act, 1881 S.138

Fact: The petitioner by filing the instant application prayed for quashing of a proceeding under Section 138 of the Negotiable Instruments Act primarily on the ground that a prior intimation was sent to the complainant, i.e., the payee, asking him not to present the cheque for encashment and simultaneously banker was also asked not to make payment against the same and in such circumstances, Section 138 of the Negotiable Instruments Act is not attracted.

Held:

It is well settled even in a case where the payee has been intimated beforehand not to present the cheque for encashment and bank was instructed not to make payment against such cheque, still then if the cheque is dishonoured as the payee ignoring such intimation presented the cheque the offence punishable under Section 138 of the Negotiable Instruments Act clearly makes out. Whether the cheque in question was forcibly obtained from the complainant under duress and coercion is a pure question of fact and essentially the defence of the accused and the same cannot be gone into at this stage. It is an admitted position the cheque bears signature of the complainant and as such filling up of the cheque by any other person is of little consequence and that cannot bring the case, out of

the ambit of an offence punishable under Section 138 of the Negotiable Instruments Act. Merely because the allegation discloses civil dispute, that would not necessarily denude the same of its criminal outfit when the same contained all the basic elements of the criminal offence.

(Paragraph – 3)

For Petitioner : Mr. Udayan Chakraborty
Mrs. Sanjukta Bhattacharjee

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved this Court for quashing of a proceeding relating to an offence punishable under Section 138 of the Negotiable Instruments Act. The grounds of quashing are as follows;

(a) A prior intimation was sent to the complainant, i.e., the payee, asking him not to present the cheque for encashment and simultaneously banker was also asked not to make payment against the same. In such circumstances, Section 138 of the Negotiable Instruments Act is not attracted.

(b) The cheque in question was not issued voluntarily but was issued under duress and coercion.

(c) Although the cheque bears the signature of the accused but the same was blank in other respect.

(d) The offence alleged is clearly a civil dispute.

2. Heard Mr. Udayan Chakraborty, learned advocate appearing on behalf of the petitioner. Perused the materials on record.

3. I have given my anxious and thoughtful consideration to the submission made by the learned advocate of the petitioner. In my opinion, none of the grounds is at all tenable for quashing of a complaint under Section 138 of the Negotiable Instruments Act. It is well settled even in a case where the payee has been intimated beforehand not to present the cheque for encashment and bank was instructed not to make payment against such cheque, still then if the cheque is dishonoured as the payee ignoring such intimation presented the cheque the offence punishable under Section 138 of the Negotiable Instruments Act clearly makes out. Whether the cheque in question was forcibly obtained from the complainant under duress and coercion is a pure question of fact and essentially the defence of the accused and the same cannot be gone into at this stage. It is an admitted position the cheque bears signature of the complainant and as such filling up of the cheque by any other person is of little consequence and that cannot bring the case, out of the ambit of an offence punishable under Section 138 of the Negotiable Instruments Act. Merely because the allegation discloses civil dispute, that would not necessarily denude the same of its criminal outfit when the same contained all the basic elements of the criminal offence.

4. For the reasons stated above, I do not find any merit in this criminal revision and the same accordingly stands dismissed. Interim order, if any, stands vacated.

5. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)