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Bombay High Court holds that material alterations to a cheque without the prior consent of both parties renders the instrument void

A single bench of the Bombay High Court (“**Bombay HC**”) has in its recent decision in *Pinak Bharat and Company vs. Shri Anil Ramrao Naik & Anr*¹ *inter alia* held that a person cannot be held guilty for the offence of dishonour of cheque under Section 138 of the Negotiable Instruments Act (“**NI Act**”) when the negotiable instrument has been altered without satisfying the contingencies for alteration of the instrument under Section 87 of the NI Act.

Brief Facts

M/s. Pinak Bharat and Company, a partnership concern, (“**Appellant**”) entered into a memorandum of understanding dated May 9, 2003 with Mr. Anil Ramrao Naik (“**Respondent**”) for the construction and development of a property. For this purpose, the Appellant advanced a loan of INR 1,00,00,000 (Indian Rupees one crore) to the Respondent. Further, in terms of the memorandum of understanding, the Respondent issued 2 (two) cheques (with the payee name and date left blank) in favour of the Appellant.

The Respondent failed to complete the development of the property leading to certain disputes between the parties including the institution of a civil suit by the Respondent for extension of time for recovery of monies by the Appellant. During the pendency of the civil suit, in or around April 2007, the Appellant filled in both cheques (without the consent of the Respondent) with the payee name and date and proceeded to deposit the same with its bank. However, both cheques issued by the Respondent were dishonoured and returned unpaid by the drawee bank for the reason ‘Refer to Drawer’.

Given the dishonour of the cheques, the Appellant issued a statutory notice under Section 138 of the NI Act calling upon the Respondent to pay the cheque amounts within 15 (fifteen) days from the receipt of the notice. The Respondent failed to make payment leading to the institution of 2 (two) complaints before the 30th Metropolitan Magistrate’s Court at Kurla, Mumbai (“**Trial Court**”).

After considering the evidence on record and the cross examination of the Appellant’s partner, the Trial Court acquitted the Respondent *inter alia* on the grounds that the: (a) cheques handed over to the Appellant were in the nature of a security; and (b) Appellant had no authority to alter the cheques by filling in the date and name of the payee without the consent of the Respondent.

Being aggrieved by the Trial Court’s decision in both complaints, the Appellant preferred appeals before the Bombay HC. Before the Bombay HC, the Respondent *inter alia* contended that in spite of filing a civil suit seeking extension of time for recovery of the amount by the Appellant, the Appellant filled in the date and name on both cheques and

¹ Criminal Appeal No. 1630 of 2011 along with Criminal Appeal No. 1631 of 2011. Judgement dated December 2, 2022

deposited the same without his consent. The Appellant contended that the Trial Court failed to consider the provisions of Sections 138 and 139 of the NI Act and as such, the cheques provided were deposited in consonance with law.

Issue

Whether the presumption under Section 139 of the NI Act could be drawn and whether the accused had successfully rebutted that presumption.

Findings and Analysis

The Bombay HC considered the factual position and disagreed with the Trial Court's acquittal of the Respondent on the ground that the cheques were provided as security. However, the Bombay HC proceeded to dismiss the appeals on *inter alia* the following grounds:

1. Alteration of a cheque (including by filling in the date and name of the payee) is permissible when the contingencies set out under Section 87 of the NI Act are met. Section 87 of the NI Act authorises alteration of a negotiable instrument if: (a) it is with the consent of the parties; and (b) the same is done to carry out a common intention of the parties.
2. When a cheque is altered without authority, the same is rendered void and prosecution under Section 138 of the NI Act cannot be initiated.
3. While the Appellant's act of filling in the payee name on both cheques was with the consent of the Respondent, the Appellant filled in the dates on the cheques without the authority of the Respondent and did not inform him. This amounted to a material alteration under Section 87 of the NI Act, and as such, the cheques were void. Consequently, proceedings under Section 138 of the NI Act could not have been initiated against the Respondent.

JSA Comment

A cheque may be provided without material information being filled in. Such material information (such as the date) is then filled in prior to the cheque being deposited for clearance and payment. For the cheque to be valid, consent of both parties is necessary before the material information is filled in. Resultantly, it is only when the cheque is valid that the offence of dishonour under Section 138 of the NI Act is attracted.

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