
P-11) and the decision of the Board of directors of respondent Corporation dated 29th May, 2002 (Annexure P-15) to the extent of decision taken,—*vide* item No. 333.41 are liable to be set aside and quashed and it is ordered accordingly.

(28) In the circumstances, the Board of Directors of the Corporation shall re-consider the entire matter in the light of the statutory provisions of the State Financial Corporation Act, 1951, the instructions issued by the Government and shall take into consideration all relevant material which is liable to be taken into consideration in the consideration process for the grant or non-grant of House Rent Allowance and other concession in accordance with the Act and the 1961 Regulations. The petition is accordingly allowed and the impugned orders 10th May, 2002 (Annexure P-10), letter dated 22nd May, 2002 (Annexure P-11) and 29th May, 2002 (Annexure P-15) to the extent of decision taken in respect of item No. 333.41 are quashed and the matter shall be considered afresh by the Board of Directors of the Corporation. There shall, however, be no order as to costs.

R.N.R.

Before V.M. Jain & Amar Dutt, JJ.

PUNJAB NATIONAL BANK,—*Appellant*

versus

HIMGIRI TRADERS AND ANOTHER,—*Respondents*

CrI. M. 486/MA of 2002

The 29th August, 2003

Negotiable Instruments Act, 1881—Ss. 9, 15 & 16—Issuance of cheques by respondents in favour of a Mill—Bank granting facility of minimum credit to the Mill on the basis of these cheques—Dishonour of cheques—No endorsement made on the cheques by the Mill in favour of Bank as required under section 9—In the absence of an endorsement Bank never become holder of the cheques in due course—Bank neither payee nor endorsee of the cheques—No right to challenge dishonour of cheques under section 138—only a payee or an endorsee entitled to make a demand for payment of the amount of cheque—Petition liable to be dismissed.

Held, that the cheques in question were never endorsed by the payee i.e. M/s. Guru Nanak Paper Mills in favour of the complainant Bank. Under these circumstances, the complainant Bank never became holder of the cheques "in due course" inasmuch as the complainant Bank is neither the payee nor the endorsee of those cheques. Under Section 138 of the Act, the payee or the holder of the cheque in due course, as the case may be, is entitled to make demand for the payment of the amount of the cheque by giving a notice in writing to the drawer of the cheque and if the drawer of the said cheque fails to make the payment of the said amount of the cheque to the payee or as the case may be, to the holder in course of the cheque, within the specified period, then the drawer of the said cheque would be punished under Section 138 of the Act.

(Para 10)

Further held, that unless and until the notice is served either by the payee or by the holder in due course of the cheques in question, the provisions of Section 138 of the Act would not apply. The complainant Bank was neither payee nor the holder in due course of the cheques in question, inasmuch as at no point of time, the payee i.e. M/s. Guru Nanak Paper Mills had endorsed the cheques in question in favour of the complainant Bank. The learned trial Magistrate had rightly dismissed the criminal complaint filed by the Bank and had rightly acquitted the accused-respondents of the charge under Section 138 of the Act and no fault could be found with the same.

(Para 11)

Ashok Sharma, Advocate, for the petitioner Bank.

Girish Angihotri, Advocate, for the respondents.

JUDGMENT

V.K. JAIN, J.

(1) This petition, for the grant of special leave to appeal, has been filed by the complainant, namely Punjab National Bank, challenging the order dated 4th May, 2002, passed by the Judicial Magistrate, dismissing the criminal complaint and acquitting the

accused respondents of the charge under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act.)

(2) The facts, which are relevant for the decision of the present petition, are the accused-respondents had issued two cheques of Rs. 2.50 lakhs each, on 26th December, 1998 and 28th December, 1998 respectively in favour of M/s Guru Nanak Paper Mills. Said M/s Guru Nanak Paper Mills deposited those cheques with the complaint Bank and the complainant Bank purchased those cheques and gave minimum credit to M/s Guru Nanak Paper Mills. When those cheques were sent to the drawee Bank for encashment, those cheques were received back unpaid being dishonoured on 11th January, 1999 with the remark "stop payment". Upon this, the complainant Bank issued notices to the accused-respondents and since the accused-respondents failed to make the payment of those cheques to the complaint Bank inspite of those notices, the complaint Bank filed criminal complaint under Section 138 of the Act against the accused-respondents. In the said criminal complaint, it was alleged by the complainant Bank that it had sanctioned various credit facilities in favour of M/s Guru Nanak Paper Mills, including the facility of bill discounting and that under this facility, the complainant Bank used to purchase the cheques, issued in favour of the party in whose favour the said facility was sanctioned and used to give minimum credit of the amount of the said cheque to the said party and under those circumstances, the complainant Bank used to become holder of those cheques "in due course" and became legally entitled to the said cheques and as such, the complainant Bank was entitled to file the criminal complaint against the accused-respondents.

(3) After recording preliminary evidence, the learned Magistrate summoned the accused-respondents for the offence under Section 138 of the Act. After the accused had appeared, the learned Magistrate served notice of accusation upon the accused-respondents, to which the accused pleaded not guilty and claimed to be tried. Thereafter, the complainant Bank produced its evidence. In the statement under Section 313, Cr.PC, the accused denied the allegations against them and stated that they had been falsely implicated in this case. The accused examined their defence evidence.

(4) After hearing both the sides, the learned Judicial Magistrate acquitted the accused-respondents of the charge under Section 138 of the Act. Aggrieved against the same, the complainant Bank filed the present petition for the grant of special leave to appeal.

(5) We have heard learned counsel for the parties and have gone through the record carefully.

(6) While dismissing the criminal complaint and acquitting the accused-respondents, it was observed by the learned Magistrate that as per Section 9 of the Act, if the cheque is payable to order then the payee or endorsee thereof is holder in due course. It was found that in the present case, the witnesses had admitted that the cheques in question were payable to order and that there was no endorsement on the said cheques made by M/s Guru Nanak Paper Mills in favour of the complainant Bank. Thus, it was found that in view of the provisions of Section 9 of the Act, when only the payee or endorsee can become a holder in due course, in the absence of any endorsement, it could not be said that the complainant Bank had become holder in due course of the cheques in question and as such, the provisions of Section 138 of the Act would not apply to the present case, inasmuch as no notice under Section 138 of the Act was given by the payee i.e. M/s Guru Nanak Paper Mills to the accused-respondents, demanding the payment of the amount of those cheques and that the complainant Bank had not become the holder in due course and as such, the notice, given by the complainant Bank, would be of no consequence and would not satisfy the provisions of the Act.

(7) Learned counsel for the petitioner Bank submitted before us that since there was an agreement between the complainant Bank and M/s Guru Nanak Paper Mills, the cheques in question would be deemed to have been indorsed by M/s Guru Nanak Paper Mills in favour of the complainant Bank. It is not disputed before us by the learned counsel for the Bank that the agreement in question is only a general agreement and specifically there is no reference to the cheques in question having been indorsed by M/s. Guru Nanak Paper Mills in favour of the complainant Bank.

(8) Sections 9, 15 and 16 of the Act read as under :—

“9. “Holder in due course”.—Holder in due course” means any person who for consideration became the possessor of a promissory note, bill or exchange or cheque if payable to bearer, or the payee or endorse thereof, if (payable to order), before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

15. Indorsement.—When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the “indorser”.

16. Indorsement “in blank” and “in full”-“Indorsee”.—[(1) If the indorser signs his name only, the indorsement is said to be “in blank”, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full”, and the person so specified is called the “indorsee” of the instrument.]

[(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]”

(9) From a perusal of the above, it would be clear that “holder in due course” would mean any person who, for consideration, became the possessor of a cheque, payable to bearer or the payee or indorsee thereof. With regard to indorsement, it would be clear that when the maker or holder of a negotiable instrument (like a cheque) signs, the same, for the purposes of negotiations on the back or face thereof or on a slip of paper, annexed thereto, or so signs for the same purpose, on a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same and is called the “indorser”. Furthermore, under Section 16 of the Act, it is provided that it would

also be clear that if the indorser signs his name only, the indorsement is said to be "in blank" and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of a specified person, the indorsement is said to be "in full" and the person so specified, is called the "indorser" of the instrument and the provisions of the Act relating to payee shall apply with necessary modifications to an indorsee.

(10) In the present case, as referred to above, the cheques in question were never indorsed by the payee i.e. M/s. Guru Nanak Paper Mills in favour of the complainant Bank. Under these circumstances, in our opinion, the complainant Bank never became holder of the cheques in question "in due course", inasmuch as the complainant Bank is neither the payee nor the indorsee of those cheques. Under Section 138 of the Act, the payee or the holder of the cheque in due course, as the case may be, is entitled to make demand for the payment of the amount of the cheque by giving a notice in writing to the drawer of the cheque and if the drawer of the said cheque fails to make the payment of the said amount of the cheque to the payee or as the case may be, to the holder in course of the cheque, within the specified period, then the drawer of the said cheque would be punished under Section 138 of the Act.

(11) From a perusal of the above, it would be clear that unless and until, the notice is served either by the payee or by the holder in due course of the cheques in question, the provisions of Section 138 of the Act would not apply. In the present case, as referred to above, the complainant Bank was neither payee nor the holder in due course of the cheques in question, inasmuch as at no point of time, the payee i.e. M/s. Guru Nanak Paper Mills had indorsed the cheques in question in favour of the complainant Bank. In our opinion, the learned trial Magistrate had rightly dismissed the criminal complaint, filed by the bank and had rightly acquitted the accused-respondents of the charge under Section 138 of the Act and no fault could be found with the same.

(12) For the reasons recorded above, in our opinion, no case for the grant of special leave to appeal, is made out. Accordingly, the present petition is dismissed.