



IN THE HON'BLE COURT OF
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE
PATIALA HOUSE, NEW DELHI

COMPLAINT CASE NO. 2504/01 OF 2004.
23/10/04

UNDER JURISDICTION OF POLICE STATION, KALKAJI

IN THE MATTER OF:

THE FEDERAL BANK LIMITED

REPRESENTED BY

MR. N. UNNIKRISHNA VERMA, SENIOR MANAGER
SATKAR BUILDING, NEHRU PLACE, NEW DELHI

EX. C.W. 11
MM

.....COMPLAINANT.

VERSUS

606/1
13/11/04

1. **M/S. OPSON TRADING COMPANY**
REPRESENTED BY ITS DIRECTOR MR. R. K. JAIN
B-2, BHANDARI HOUSE,
91, NEHRU PLACE, NEW DELHI-110019.

20/10/08
101/1

2. **MR. R. K. JAIN**
B-2, BHANDARI HOUSE,
91, NEHRU PLACE, NEW DELHI-110019.

Present Court
Complaint
Mr. S. K. Aggarwal
disposed
18/10/04

3. **MR. SIDDIQUI**
B-2, BHANDARI HOUSE,
91, NEHRU PLACE, NEW DELHI-110019.

.....ACCUSED

**COMPLAINT FILED UNDER SECTION 138, SECTION 142 READ WITH
SECTION 141 OF NEGOTIABLE INSTRUMENTS ACT, 1881.**

MOST RESPECTFULLY SHOWETH:-

1. The complainant is one of the scheduled banks having its registered office at Aluva, Ernakulam, Kerala and one amongst its branches at Satkar Building, Nehru Place, New Delhi-110 019. Mr. N. Unnikrishna Varma is designated as Senior Manager and also one of the Power of Attorney holders of the bank competent to file and pursue the present complaint on behalf of the complainant.

For The Federal Bank Ltd.

N. N. Varma
Senior Manager
Nehru Place, New Delhi

ATTESTED

Examiner Dated 18/10/04

215

163

CC No. 616940/16

25.05.2017



The court is functioning with single substitute steno.

Present: None for complainant.

Accused with counsel.

Bail bond U/s 437 A Cr.P.C has been filed on behalf of accused. Considered and accepted.

Vide my separate judgment of even date announced in the open court accused has been acquitted U/s 138 NI.Act.

After due compliance, file consigned to record room.


(MANISHA TRIPATHY)

MM (NI Act)-03/SE/ND

25.05.2017

ATTESTED

Examiner Dated.....


IN THE COURT OF MS MANISHA TRIPATHY: M.M-03 (N.I.ACT):
SOUTH-EAST DISTRICT, SAKET COURTS COMPLEX: NEW DELHI

CC NO.: 616940/16

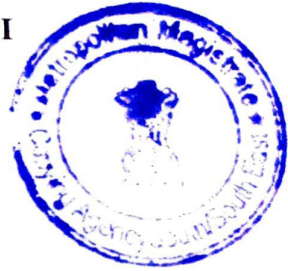
Federal Bank Limited

Represented by

Mr. N. Unnikrishna Verma, Senior Manager

Satkar Building, Nehru Place, New Delhi

..... Complainant



Vs.

1. M/s Opson Trading Company
Represented by its Director Mr. R. K. Jain
B-2, Bhandari House,
91, Nehru Place, New Delhi-19.

2. Mr. R. K. Jain
B-2, Bhandari House,
91, Nehru Place, New Delhi-19.

3. Mr. Siddqui
B-2 Bhandari House,
91, Nehru Place, New Delhi-19.

.....Accused

Date of Institution of Complaint	: 18.10.2004
Offence Complained of	: u/s 138 N.I. Act
Plea of Accused	: Not Guilty
Date of Reserving	: Not reserved
Decision	: Acquitted
Date of Decision	: 25.05.2017

JUDGMENT

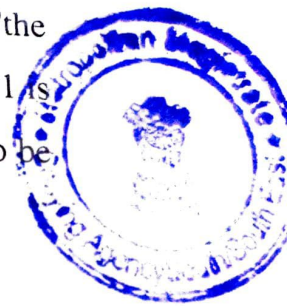
1. The present case was instituted on a complaint filed by Federal Bank Ltd . (hereinafter referred to as 'the complainant') against M/s Opson Trading Company Ltd (hereinafter referred to as 'the accused no.1'), Mr. R. K. Jain (hereinafter referred to as 'the accused no.2') and Mr. Siddqui (hereinafter referred to as 'the

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Examiner Signed *1/9/17*

accused no.3') u/s 138 of Negotiable Instrument Act (hereinafter referred to as 'the Act'). Complainant is stated to be one of the scheduled banks. The accused no. 1 is alleged to be a private limited company and accused no. 2 and 3 are alleged to be the directors of accused no.1.



2. Brief facts of the case leading to the present complaint are that M/s Secos India Pvt Ltd had approached the complainant bank for considering discounting of bill facility and got some cheques discounted on 22.03.2004, including cheque bearing number 399060 dated 22.03.2004 sum of Rs. 14,86,000/- drawn on Centurian Bank, Deenar Bhavan, 44, Nehru Place, New Delhi-19, in favour of M/s Secos India Pvt. Ltd. issued by accused no. 1 company (hereinafter referred to as 'said cheque'). Accused no.2 and 3 are alleged to be directly involved in the dealings relating to the issuance of the cheque and accused no. 3 had allegedly signed the cheque. Said cheque was discounted, M/s Secos India Pvt. Ltd. had withdrawn the discounted amount and the complainant bank became holder in due course of the said cheque. Upon presentation for encasement by the complainant bank to the drawee bank, the said cheque was returned dishonoured vide memo dated 14.09.2004 with remarks "Insufficient Funds". The complainant sent legal demand notice dated 18.09.2004 to the accused through Regd. AD Post demanding payment of the said cheque within 15 days of the notice. Despite service of notice, the accused failed to pay the amount of the dishonoured cheque within stipulated time. Hence, the present complaint.

3. After perusal of material on record prima facie case was made out and therefore the accused persons were summoned, however, complainant dropped proceedings qua accused no.2 and notice u/s 251 Cr.PC was served only upon accused no. 3 Jameela Siddiqui to which she pleaded not guilty and claimed trial.

Manish Tripathy

4. In order to establish his case the AR of complainant Sh. N. Unkrishna Varma had filed pre summoning evidence by way of affidavit wherein he reiterated the allegations made in the complaint. He exhibited following documents :



i	Copy of power of attorney	Ex. CW1/1
ii	Cheque bearing no. 399060	Ex. CW1/2
iii	Cheque return memo dated 14.09.2004.	Ex. CW1/3
iv	Copy of the notice 18.09.2014.	Ex. CW1/4
v	Courier receipts	Ex. CW1/5 to Ex. CW1/7
vi	Postal Receipts	Ex. CW1/8 to Ex. CW1/10
vii	Complaint	Ex. CW1/11

5. Subsequently, George Joseph was substituted as AR of the Complainant and tendered his evidence by way of affidavit as Ex. CW1/A and relied on the documents filed in pre summoning evidence. He additionally relied on statement of account of M/s Secos India Pvt. Ltd. Ex. CW1/12. Complainant evidence was closed after cross examination of the AR of Complainant and statement of accused u/s. 313 Cr.P.C. was recorded. The accused submitted that she was proprietor of Opson Trading, a proprietary concern and was not a director of any company by name of Opson Trading. She further stated that she had neither any dealing with M/s Secos India Pvt. Ltd. nor she had any liability towards M/s Secos India Pvt. Ltd. nor she had issued the said cheque to M/s Secos India Pvt. Ltd. and that she was not aware how, if at all, the cheque reached to M/s Secos India Pvt. Ltd. She further stated that she had not issued the cheque and had not received legal demand notice. She expressed her intent to lead defence evidence.

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Examiner Date *17/9/14*



6. Thereafter, Accused led evidence in her defence and examined herself u/s. 315 Cr.P.C. as DW1. DE was closed after affording three effective opportunities to complainant to cross examine the accused.

7. Thereafter, final arguments were advanced by Ld. counsel for the accused which are mentioned at appropriate places in discussion below. No arguments were advanced on behalf of complainant despite opportunity. I have given my thoughtful consideration to the arguments advanced by Ld. counsel for the accused.

8. Before proceeding further it will be useful to have a look at relevant provision-

"138. Dishonour of cheque for insufficiency, etc., of funds in the accounts -

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 extend to two year", 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 induce 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 cheques as unpaid, and

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(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.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability."



9. Thus, for an offence under s. 138 NI Act it is essential that the cheque must have been issued in discharge of legal debt or liability by accused on an account maintained by him with a bank and on presentation of the cheque for encashment to the bank within the period its validity the cheque must have been returned unpaid; The payee of the cheque must have issued legal notice of demand within 30 days from the receipt of the information by him from the bank regarding the return of the cheque and the drawer of the cheque failed to make the payment within 15 days of the receipt of the aforesaid legal demand notice.

10. The cheque was presented to the bank within validity period and was returned unpaid with remarks 'insufficient funds' is established by cheque return memo Ex.CW1/3. Legal notice demanding the cheque amount was dispatched at the address of the accused within statutory period of 30 days is established by copy of legal notice Ex.CW1/4 and original postal receipts Ex.CW1/8 to Ex.CW1/10 and courier receipts Ex. CW1/5 to Ex.CW1/7 and is deemed to have been served by virtue of Section 27 of General Clauses Act read with section 114 of Indian Evidence Act. Non payment towards the said cheque is also not in dispute.

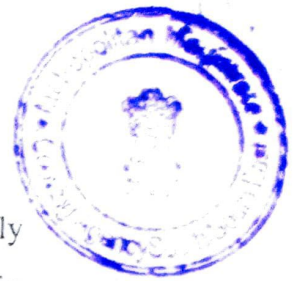
11. Now points to be determined by this court are:

(i) Whether the complainant is the holder in due course of the said cheque; and

(ii) Whether the accused had issued the cheque and if so was it in discharge of any legally enforceable debt or liability;

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Whether the complainant is the holder in due course of the said cheque;

12. It was argued on behalf of the accused that the said cheque was evidently issued in favour of third party. The cheque was not endorsed by the third party in favour of complainant and in absence of any endorsement mere delivery of cheque would not suffice to make the complainant holder in due course. As such the present complaint was not maintainable.

13. The relevant provisions of law are reproduced as under:-

"8. "Holder.—The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

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" 9. Holder in due course.- "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorse 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."

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"13. Negotiable instrument.-[(1) A "negotiable instrument" means a promissory note, bill of exchange or cheque payable either to order

Manish Kripot

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Examined by *[Signature]* 11/9/19

or to bearer.

Explanation (i).- A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.



Explanation (ii).- A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Explanation (iii) Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one or two, or one or some of several payees.]

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15. Endorsement.- When the maker or holder of an 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 endorser.

16. Endorsement "in blank" and "in full"-"endorsee"-1[(1)] If the

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endorser signs his name only, the endorsement 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 endorsement is said to be "in full", and the person so specified is called the "endorsee" of the instrument.



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

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118. Presumptions as to negotiable instruments.-

(g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

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14. In **Bank of India v. State & Others, 2010(119) DRJ 401**, the Director of the company, had issued cheques from his personal account in favour of the company so that the amount deposited in the account of the company that had availed overdraft and other facilities from the bank is utilised for discharging dues of the bank. On dishonour of the cheque, the bank filed a complaint claiming itself to be the "holder in due course". While the learned Metropolitan Magistrate issued a notice u/s 251 Cr.P.C. on the accused persons, in revision, the learned Additional Sessions Judge observed that the bank was not a holder in due course since there was no endorsement u/s 16 of the N.I. Act made on the cheque and the status of the complainant bank, under these circumstances, cannot be treated as "holder in due course". After referring to Section 9 of the N.I. Act which defines

Manish P. Singh

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holder in due course, Hon'ble High Court held the complaint to be maintainable and observed as under:-



15.

"5. It is apparent from this definition that for being a 'holder in due course' of a bill or a cheque it was not necessary that there should be an endorsement on the bill or cheque. 'Holder in due course' has been defined as any person, who for consideration, becomes the possessor of the promissory note or cheque. There is no doubt that endorsee or the payee of such a bill or cheque are also considered as 'holder in due course', but, it is not the case that payee or endorsee alone are holders in due course. A person whose banking account is overdrawn if negotiates with his bankers a cheque, drawn by a third party, to reduce the overdraft, the banker becomes a holder for value of the cheque. The pre-existing debt of the overdraft is a sufficient consideration for the negotiation of a cheque to the banker. If a person handovers cheque to the bank with the clear understanding to the bank that cheque is towards the debt payable by the company, though the cheque remains in the name of the company but the bank becomes holder of the cheque in due course. What is to be seen is that whether the bank has come into possession of the cheque for a value pursuant to a contract between the parties express or implied. Once it is established to the satisfaction of the Court that the cheques were issued for discharge of the debt of the company, the bank who had given this debt to the company would be considered as 'holder in due course'. The 'holder in due course' of cheque means any person entitled to receive or recover the amount due thereon from the parties thereto."

16.

In the instance case, AR of complainant deposed that the said cheque was discounted by the complainant bank at the request of the M/s Secos India Pvt. Ltd. who is the payee named on the cheque and the amount after deduction of discounting charges was credited to the payee. This deposition of the AR is not disputed by the accused persons. Thus, In view of aforesaid judgment, even though there was no endorsement in favour of complainant bank, nonetheless, it had for consideration became the possessor of a cheque and therefore was holder in due course.

Manish Goiswami



Whether the accused had issued the said cheque in discharge of any legally enforceable debt or liability

17. The defence raised by the accused is that she was not a director of any company by name of Opson Trading; that she was proprietor of a proprietary concern by the name of 'Opson Trading' but she had neither any dealing with Secos India Pvt. Ltd. nor she had any liability towards Secos India Pvt. Ltd. nor she had issued the said cheque and that she was not aware how, if at all, the said cheque reached Secos India Pvt. Ltd; Also, that she had no concern with the premises B-2, Bhandari House, 91, Nehru Place, New Delhi-19 and was not served the legal demand notice.

18. The AR of complainant in his evidence by way of affidavit deposed that M/s Opson Trading Company was a private limited company and the accused Jameela Siddiqui was its director and also signatory of the said cheque and was directly involved in transactions relating to issuance of the cheque. On the other hand the accused as DW1 deposed that she had no liability towards Secos India Pvt. Ltd. and she had not issued the the said cheque to Secos India Pvt. Ltd. She further deposed that the signatures on the said cheque were not hers. Above said deposition of the accused remained unrebutted as the complainant failed to cross examine the accused despite opportunities.

19. It is settled principal of law that if a party fails to put its case to opponent's witness or asks no question on any material point during his cross- examination, then it will be taken to accept the witness account. It was reiterated by Hon'ble Supreme Court of India in the case of **Sarwan Singh v State of Punjab (AIR 2003 SC 3652)** in following words :-

Manish Raipally

"...It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross examination, it must follow that the evidence tendered on that issue ought to be accepted. It goes without saying that a skillful cross-examiner must hear the statements in chief examination with attention, and when his turn comes, he should interrogate the witness on all material points that go against him. If omits or ignores then they must be taken as an acceptance of the truth of that part of witness's evidence."



20. In the instant case, the complainant did not dispute deposition of the accused regarding having no liability towards Secos India Pvt. Ltd. as well as the said cheque not bearing her signatures. Therefore, the complainant is deemed to have accepted the evidence of the accused on this aspect.

21. For the reasons discussed herein above, the complainant has failed to prove that the said cheque was issued by the accused and it was issued in discharge of legal liability towards Secos India Pvt. Ltd. The complainant has failed to prove its case, therefore, the accused Jameela Siddiqui is acquitted of the offence punishable u/s 138 N.I. Act

Announced in open court
on 25.05.2017

Manisha Tripathy

(Manisha Tripathy)
MM-03(N.I. Act), South-East,
Saket, New Delhi

