

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 956 of 2017**

1. Simeya Hariramani S/o Dilip Hariramani Aged About 23 Years Patner M/s Global Packaging, R/o Baloda Bazar, Tahsil-Baloda Bazar, District- Baloda Bazar-Bhatapara, Chhattisgarh,
2. Dilip Hariramani S/o Khiyaldas Hariramani Aged About 48 Years Partner Global Pachaging, R/o Balodabazar, Tahsil-Baloda Bazar, District- Baloda Bazar-Bhatapara, Chhattisgarh, --- **Petitioners**

Versus

Bank of Baroda Branch Baloda Bazar, Baloda Bazar, District Baloda Bazar-Bhatapara, Chhattisgarh, through Prashant Kumar Gartia S/o Kartikeshwar Gartia, Branch Manager, Bank of Baroda, Branch-Balodabazar, District- Balodabazar-Bhatapara, Chhattisgarh Details of Respodent Is Wrongly Mentioned In The Cause Titile of Impugned Order Annexure-A/1, --- **Respondent**

For the Petitioners :
For the Respondent :

Mr. Adil Minhaj, Advocate.
Mr. Ankit Singhal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

20.02.2018

1. Heard.
2. The present petition is against the order dated 28th June 2017 passed by the 3rd Additional Sessions Judge, Balado Bazar in Criminal Revision No.H-23/2017 (*Simeya Hariramani and another Vs. Bank of Baroda*) whereby the charge framed by the CJM, Baloda Bazar vide order dated 10.02.2017 passed in Criminal Case no.54/2016 has been maintained.
3. As per the case of petitioner, on 07.02.2015 a complaint was filed by the Bank of Baroda through its Branch Manager of Baloda Bazar u/s 138 of the Negotiable Instruments Act,

1881 on 07.12.2015 when 3 cheques issued by the petitioner were dishonoured. The details of cheques are as under :-

S.No	Bank & A/c No.	Drawer	Drawee	Cheq No. & date	Amount Rs.	Date of dishonour
1	HDFC Bank 0152863000254	Global Packaging	Global Packaging	000502, dt.17.10.15	25 Lakhs	17.10.15
2	HDFC Bank 0152863000254	Global Packaging	Global Packaging	00503 dt.27.10.15	25 Lakhs	27.10.15
3	HDFC Bank 0152863000254	Global Packaging	Global Packaging	000504 dt.31.10.15	25 lakhs	31.10.15

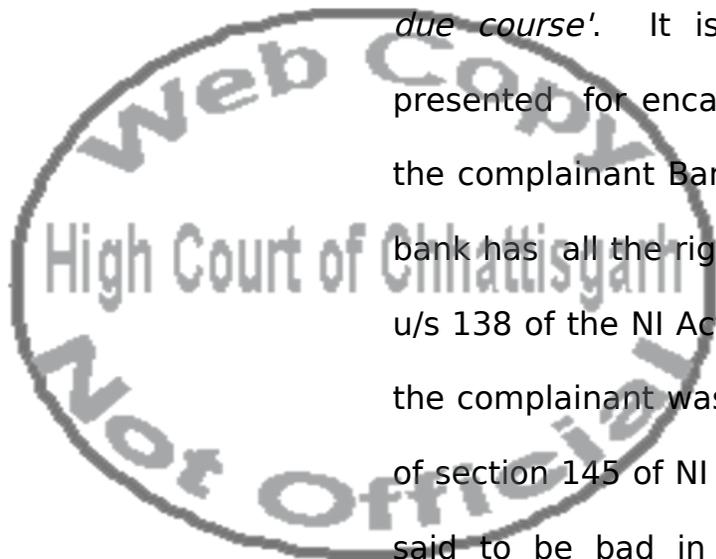
4. After the complaint was filed, the same was subject of challenge about the maintainability. Initially the objection was made before the JMFC by the petitioners/accused that the drawer and drawee of the cheques being one and the same, the Branch Manager of the Bank cannot maintain the complaint u/s 138 of the N.I. Act. The same having been over ruled and the charges were framed on 10.02.2017, the same was subject of challenge before the revisional Court. The revisional Court by impugned order dismissed the revision holding that complaint filed u/s 138 of N.I. Act is tenable and the charges were rightly framed. Hence this petition u/s 482 of Cr.P.C.

5. Learned counsel for the petitioner submits that in this case, certain cheques were issued by the Company namely Global Packaging which were of the HDFC Bank and the drawer and drawee were the same i.e., Global Packaging. He submits that in a case like nature when the drawer and drawee are one and the same and when the cheques are presented for encashment, if they are dishonoured, the provisions of section 138 of the NI Act cannot be pressed into motion by third party. He submits that the Branch Manager without any right or authority has filed the complaint u/s 138 of the N.I. Act, therefore, the same is unsustainable under the law and

the entire proceedings before the court below is liable to be quashed. He further submits that the cognizance could not have been taken only on the basis of photocopy of the cheques, therefore, the said cognizance is liable to be quashed and no statement u/s 200 Cr.P.C. was recorded.

6. Per contra, learned counsel for the respondent vehemently opposes the arguments of the petitioners and submits that the said cheques were issued for discharge of liability as against the loan which was availed by the Company and the drawer was Global Packaging and the drawee was also Global Packaging but the Bank inter-meddled as '*holder in due course*'. It is stated that when the cheques were presented for encashment for discharge of a debt owed to the complainant Bank they were dishonoured, therefore, the bank has all the right or authority to maintain the complaint u/s 138 of the NI Act. He further submits that the affidavit of the complainant was enclosed along-with complaint in terms of section 145 of NI Act, therefore, the cognizance cannot be said to be bad in law. He further submits that all the objections can be gone into during the course of evidence and if the original cheques are not produced then automatically the complaint may fail. Therefore, the objection raised by the petitioner is premature.

7. Perused the document. The question which falls for consideration in this case is whether the Bank was entitled for encashment of Cheque since the drawer and drawee were one and the same. A perusal of the complaint which is placed shows that the complaint was filed by Bank of Baroda through its Branch Manager against the petitioners u/s 138 of



the N.I. Act. As per the averments of the complaint, the petitioner respondent availed the credit loan facility of Rs.6,73,80,000/- being a partnership firm i.e., Global Packaging and the repayment of loan was to be made in 3 instalments. Pursuant to the promise of repayment, 3 cheques were issued in sum of Rs.25 lakhs each drawn on HDFC Bank by M/s. Global Packaging wherein they were holding another account. The said cheques were given to the Bank to liquidate the amount of loan which was outstanding against them. However, when the cheques were presented in the Bank and were routed through the Bank wherein another account of accused was maintained, the same got dishonoured and returned back with an endorsement of "insufficient funds". Thereafter, according to the complaint, the statutory notices were given to liquidate the amount but when the loan was not repaid, the complaint u/s 138 of N.I. Act was filed. In the instant case, though the drawer and drawee were the same, but the cheques which got dishonoured were handed over to the Bank for repayment of the loan, therefore, the status of the complainant Bank under the circumstances would be that of "Holder in Due Course".

8. Section 9 of the N.I. Act defines '*Holder in Due Course*' as under:

"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 endorsee 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

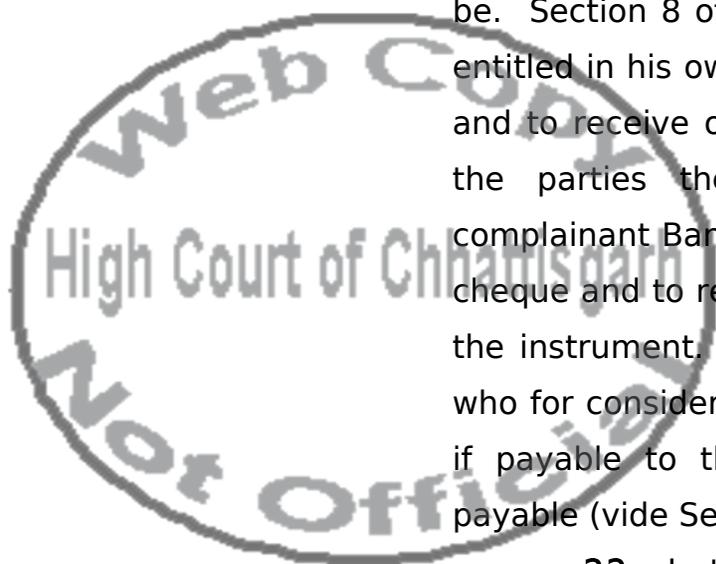
the person from whom he derived his title. “

9. The Supreme Court in similar nature of case reported in *(2001) 7 SCC 721 Punjab & Sind Bank Vs. Vinkar Sahakari Bank Ltd.*, held that so long as the instrument is in possession of a 'holder in due course' such instrument would be operative as a bill of exchange even if the drawer and drawee are happened to be the same person or banking institution. It was further held in paras 21 and 22 thus :

“21. Section 142 of the Act envisages a complaint to be made in writing either by the payee or the holder in due course of the cheque, as the case may be. Section 8 of the Act defines “holder” as any person entitled in his own name to the possession of the cheque and to receive or recover the amount due thereon from the parties thereto. We have no doubt that the complainant Bank was well within its right to possess the cheque and to receive or recover the amount covered by the instrument. “Holder in due course” means a person who for consideration became the possessor of a cheque if payable to the bearer before the amount became payable (vide Section 9).

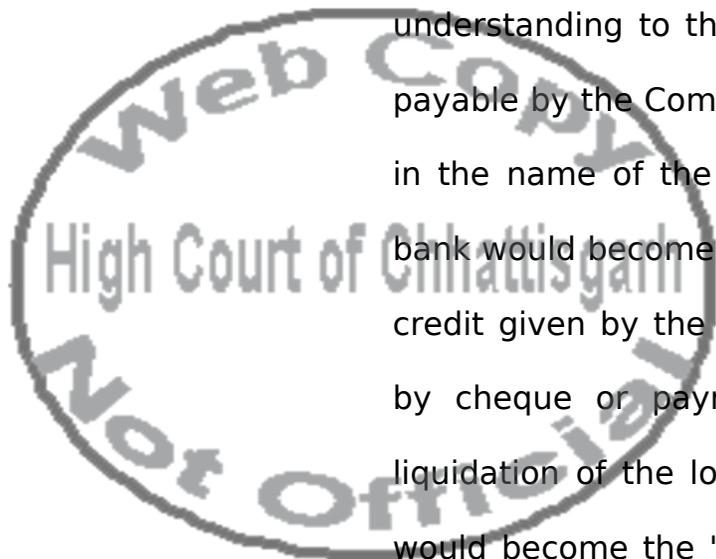
22. In this context reference has to be made to section 118 (g) of the Act which contains a mandate that until the contrary is proved the holder of a negotiable instrument shall be presumed to be a holder in due course. Thus there is no escape for the court from drawing such presumption.”

10. It is apparent from the definition of “holder in due course” 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. In the instant case, according



to the complainant the petitioners/accused had obtained the loan from the complainant-Bank and handed over the cheques in repayment of loan and therefore the cheques were held by the Bank in consideration of loan to liquidate the same. A person whose banking account is overdrawn or his loan account is over due, if negotiates with his banker a cheque to reduce the overdraft or to repay the loan the banker becomes a holder for value of the cheque. The pre-existing debt of the loan or overdraft is a sufficient consideration for the negotiation of a cheque to the banker. If a person hand-overs cheque to the bank with the clear understanding to the bank that cheque is towards the debt payable by the Company or Firm though the cheque remains in the name of the Company or Firm but in such case the bank would become holder of the cheque in due course. The credit given by the Bank to its customer can be discharged by cheque or payment in cash and if the payment for liquidation of the loan is made by a cheque then the Bank would become the 'holder in due course' irrespective of the fact that the cheque is not endorsed in favour of the bank. The existing debt is always considered as valid consideration, therefore, in the facts and circumstances of the present case though the drawer and drawee were the same, the Bank was holder in due course.

11. Under the facts and circumstances of the case, the orders passed by the Courts below cannot be held to be illegal and it shall always be open to the petitioners to rebut the presumption during the course of evidence that the Bank was not a 'holder in due course' and it was not for any



consideration of liquidation of the loan. Prima facie, the complaint having been registered on the basis of section 145 of the N.I. Act upon the affidavit, the same cannot be quashed at the threshold and the petitioners are liable to face the trial of complaint under Section 138 of the N.I. Act.

12. For the foregoing reasons, I do not find any reason to interfere in the in the orders of the courts below. Accordingly, the petition is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE

R a o

