



NEGOTIABLE INSTRUMENT

Security Cheques vs. Enforceable Debt: Delhi High Court Reiterates Limits of Section 138 NI Act

AUTHOR Shrishail Kittad, Ritika Dedhia

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Introduction

The Delhi High Court, in a significant judgment has once again highlighted the legal distinction between security cheques and those issued in discharge of a legally enforceable debt or liability under the Negotiable Instruments Act, 1881.

In the case of *Sri Sai Sapthagiri Sponge Pvt. Ltd. v. State (GNCT of Delhi) & Anr.*^[1], the Court quashed five complaints filed under Section 138 of the NI Act, holding that cheques issued merely as security or for audit purposes cannot be treated as instruments issued in satisfaction of a debt. The Court also found that the summoning orders adopted by the Delhi Magistrate originally issued by a court in Bellary that lacked jurisdiction were non-established in law.

This ruling provides important judicial clarity on the non-enforceability of security cheques, the scope of criminal liability under the NI Act, and the procedural implications of jurisdictional transfers in cheque dishonour cases.

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Background of the Case

The dispute arose out of a series of business transactions between M/s Magnifico Minerals Pvt. Ltd., a Delhi-based company engaged in the resale of imported steam coal, and M/s Sri Sai Sapthagiri Sponge Pvt. Ltd., a company operating from Bellary, Karnataka.

According to Magnifico Minerals, coal was supplied to the petitioner company on multiple occasions, and an amount of approximately ₹1.91 crore remained outstanding as of November 2014. In purported discharge of this liability, the petitioner company issued five cheques of varying amounts ranging between ₹25 lakh and ₹50 lakh drawn on the State Bank of Mysore, Bellary branch.

When presented for encashment by the complainant through its banker, the Bank of India, Parliament Street, New Delhi, the cheques were returned unpaid with the remark "STOP PAYMENT". Consequently, Magnifico Minerals issued legal notices demanding payment, and upon non-compliance, filed five separate complaints under Section 138 of the Negotiable Instruments Act, 1881, before the Judicial Magistrate, Bellary.

However, the Bellary court later returned the complaints on 14 October 2015, holding that it lacked territorial jurisdiction in light of the Supreme Court's decision in *Dashrath Rupsingh Rathod v. State of Maharashtra*^[2]. The complaints were thereafter refiled before the Patiala House Courts, New Delhi, where the Metropolitan Magistrate adopted the summoning orders earlier issued by the Bellary court without recording fresh pre-summoning evidence.

Aggrieved by these actions, the petitioner approached the Delhi High Court under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the summoning orders dated 27.04.2015, 18.05.2015, and 08.04.2015, as well as the entire proceedings arising therefrom.

Petitioner's Contentions

The petitioner argued that:

- The cheques were issued only for security purposes, as explicitly recorded in a Memorandum of Understanding (MoU) dated 6th May, 2014 between the parties.
- The MoU stated that the cheques "were issued for audit purpose and not for depositing into the bank."

- A separate Letter of Credit for ₹31 lakhs was already issued and encashed by the complainant, evidencing ongoing payment arrangements.
- The complaints were therefore an abuse of the process of law, as the cheques were not meant to be encashed.
- Furthermore, since the Bellary court itself returned the complaints for lack of jurisdiction, the summoning orders issued there were non-est and could not be adopted by the Delhi court without passing fresh orders.

Respondent's Submissions

M/s Magnifico Minerals Pvt. Ltd. contended that:

- The cheques, even if initially issued as security, crystallised into a legally enforceable liability once the petitioner failed to clear outstanding dues.
- The MoU allowed adjustment of future Letters of Credit against old dues, implying acknowledgment of liability.
- Under Section 139 of the NI Act, a presumption exists that every cheque is issued for discharge of debt, which could only be rebutted at trial.
- Relying on *HMT Watches Ltd. v. M.A. Abida*^[3] and *Credential Leasing & Credits Ltd. v. Shruti Investments*^[4], it was argued that whether the cheques were issued as security or otherwise is a question of fact, not suitable for adjudication under Section 482 CrPC.

Court's Analysis and Findings

The Court examined the MoU dated 06th May, 2014, which unambiguously recorded that the cheques were issued “for security purpose only” and “not for depositing into bank.”

The Court held that:

- The MoU was a document of impeccable and undisputed authenticity, relied upon by both parties.
- Its language clearly indicated that the cheques were not issued in discharge of any existing debt or liability, but only to satisfy the complainant's request for audit and banking purposes.
- The respondent's interpretation that these cheques subsequently converted into enforceable debt was a misreading of the MoU, which pertained only to Letters of Credit and not to the cheques.

Jurisdictional Error and Invalid Summoning Orders

An additional and equally significant issue before the Court concerned the **validity of the summoning orders** and the **territorial jurisdiction** of the Magistrate.

Originally, the complaints were filed where summons were issued against the petitioner. However, following the Supreme Court's landmark decision in *Dashrath Rupsingh Rathod v. State of Maharashtra*^[5], it was clarified that the offence under Section 138 of the NI Act is committed only at the place where the cheque is dishonoured that is, where the drawer maintains the bank account. Consequently, the Bellary court returned the complaints on 14 October 2015 for want of jurisdiction, directing them to be presented before the court having competent territorial authority.

The complaints were subsequently filed before the Metropolitan Magistrate, Patiala House Courts, New Delhi. However, instead of issuing fresh summons after taking cognizance, the Delhi Magistrate adopted the earlier summoning orders passed by the Bellary court a court that had already held itself to be without jurisdiction.

Justice Neena Bansal Krishna noted that once a complaint is returned for lack of jurisdiction, all proceedings conducted by that court, including any summoning orders, become non-est in law. The Delhi court was therefore required to pass a fresh summoning order after due application of mind. By merely adopting the previous order, the Magistrate committed a jurisdictional error that rendered the subsequent proceedings legally invalid.

The Court also referred to the Negotiable Instruments (Amendment) Act, 2015, which inserted Sections 142(2) and 142-A, clarifying the place of jurisdiction for cheque dishonour cases and validating transfers to the appropriate court. Nonetheless, the procedural lapse in this case failure to issue a fresh summoning order was fatal.

Accordingly, Justice Krishna held that the summoning orders dated 27.04.2015, 18.05.2015, and 08.04.2015, having been issued by a court lacking jurisdiction and later adopted without authority, were null and void, warranting their quashing along with the complaints.

Conclusion

The Delhi High Court held that:

- The cheques in question were security cheques not meant for encashment.
- There was no legally enforceable debt or liability, a mandatory precondition for invoking Section 138 of the NI Act.
- The summoning orders issued by the Bellary court and adopted by the Delhi court were without jurisdiction.

Author's View

The Delhi High Court's ruling reaffirms two critical legal principles. First, security cheques when clearly issued for audit or assurance purposes and not towards an existing debt cannot attract criminal liability under Section 138 of the NI Act. This distinction safeguards businesses from the misuse of cheque dishonour provisions as tools for coercive recovery.

Second, the judgment highlights the importance of procedural propriety and territorial jurisdiction. Once a complaint is returned for lack of jurisdiction, any prior proceedings, including summoning orders, become legally void. Courts must issue fresh summons after due application of mind, ensuring that jurisdictional integrity is maintained.

Overall, the decision strengthens the balance between commercial accountability and procedural fairness, preventing the criminalisation of civil disputes in cheque transactions.

For more details, write to us at: contact@indialaw.in

[1] CRL. M.C. 1034/2017 & CRL.M.A. 4330/2017, CRL.M.C. 2071/2017 & CRL.M.A. 8698/2017, CRL.M.C. 2085/2017 & CRL.M.A. 8583/2017, CRL.M.C. 2842/2017 & CRL.M.A. 11826/2017, CRL.M.C. 2853/2017 & CRL.M.A. 11807/2017

[2] (2014) 9 SCC 129

[3] (2015) 11 SCC 776

[4] 2015 (4) JCC (NI) 252

[5] (2014) 9 SCC 129

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