



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 8th OF JANUARY, 2026

MISC. CRIMINAL CASE No. 21806 of 2024

DR.SANDEEP PATEL

Versus

ANIL KUMAR GUPTA

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Appearance:

Shri Lawkush Prasad Mishra - Advocate for the petitioner.

Ms. Neerja Agrawal, learned counsel for the respondent.
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ORDER

The petitioner has filed this petition under Section 482 of Cr.P.C. challenging the order dated 21.03.2024 (Annexure A/1) passed by the 9th ASJ, Rewa (M.P.) in Criminal Revision No.33/2024 and order dated 09.11.2022 (Anneuxre A/3) passed by the JMFC, Rewa (M.P.) in SC NIA No.404/2020 whereby the application filed by the present petitioner under Section 138/142 of the Negotiable Instrument Act (for short, hereinafter referred to as the "N.I. Act") has been dismissed.

2. Brief facts of the case are that the complainant filed a complaint before the learned Trial Court stating that in December 2019, the applicant borrowed a loan of Rs. 5,00,000/- from the respondent for family needs, assuring repayment within four to five months. Upon demand, the applicant issued Cheque No. 023218 dated 31.05.2020 for Rs. 4,00,000/- drawn on Bank of Maharashtra, Branch Rewa, towards discharge of his liability. The cheque was presented on 21.07.2020 in Union Bank of India, Branch Raniganj, Rewa, but was dishonoured vide return memo dated 23.07.2020 with the endorsement "Funds Insufficient". A



statutory demand notice dated 04.08.2020 was duly served upon the applicant on 06.09.2020. Despite service of notice, the applicant failed to make payment within the stipulated period, thereby committing an offence under Section 138 of the Negotiable Instruments Act, 1881.

3. Learned counsel for the petitioner argued at length and has submitted that both the Courts below have committed an error in dismissing his application. Respondent No.1 filed the complaint against the dishonour of the cheque where in the said cheque it has been clearly mentioned with a note as "not negotiable". Therefore, the provisions of Section 138 of the N.I. Act is not applicable against the present petitioner. It is further argued that the trial court in its order held that since the disputed cheque has the words 'not negotiable' on it, whether the cheque falls within the ambit of Section 138 of the Negotiable Instruments Act or not can be decided only after taking evidence and on that basis the application of the applicant has been rejected. Whereas the sub-ordinate court should have considered that since the words 'not negotiable' were already written on the said cheque, therefore, the same would not fall within the ambit of Section 138 of the N.I. Act. It is further submitted that he has also given reply to the notice under Section 138 of the N.I. Act and clearly mentioned that the cheque has not been issued with a note that it is not negotiable. Therefore, the provisions of Section 138 of the N.I. Act is not invoked on the present applicant. To support his argument, the learned counsel for the petitioner has placed reliance upon the judgement delivered in the case of *Durga Shah Mohal Lal Bankers Vs. Governor General in Council and other*, reported in *AIR 1952 Allahabad 590* in which it has been held that when a cheque is under the law of negotiable instrument its negotiability is destroyed only if it is marked as not negotiable on its face it does



not get destroyed by simply being crossed whether generally or specially. The only effect of crossing a cheque is, as stated in Section 126, Negotiable Instruments Act is that the drawee bank must not pay it otherwise than to any banker if it is crossed generally, or to the particular banker if it is crossed specially. There is no other effect of the crossing. Relevant para of the judgement are reproduced below:

"3. The suit was jointly defended by the defendants. Their sole contention was that the plaintiff was not justified in paying the cheque in cash to Sgt. Pettiford when it was a crossed cheque. Their contention was, & still is, that the plaintiff should have paid it through a banker & not direct, & that the cheque was handed over to Sgt. Pettiford not to be cashed but to be paid into the treasury through Lt. Mausel. The trial Ct. took the view that the cheque was negotiable despite the crossing & was negotiated by Sgt. Pettiford to the plaintiff which acted in good faith & without negligence, that it became holder in due course of the cheque & that the defendants were liable to pay the money to it. The learned Dist. J., on appeal, held that the plaintiff was not justified in paying the amount of the crossed cheque in cash to Sgt. Pettiford & did not act without negligence.

4. A cheque is under the law a negotiable Instrument. Its negotiability can be destroyed only if it is marked as "not negotiable" on its face; it is not destroyed by its simply being crossed whether generally or specially. The only effect of crossing a cheque is, as stated in Section 126, Negotiable Instruments Act, that the drawee bank must not pay it otherwise than to any banker if it is crossed generally, or to the particular banker if it is crossed specially. There is no other effect of the crossing. In Carlon v. Ireland (1856) 25 LJQB 113, Coleridge J. stated at p. 114 :

"It may be that the effect of the crossing is to require caution on the part of the person taking it, & to throw upon him the obligation of showing that he had taken it bona fide, & had given value for it ; but it cannot be carried further without interfering with the negotiability of the instrument."

Lord Cairns C. said in Smith v. The Union Bank of London (1875) 1 QBD 31 that at p.34, that,

"Whatever may have been the effect of a crossing, the negotiability of the cheque was not thereby restrained."

4. Counsel for the respondent has argued at length and prayed for dismissal of this petition submitting that this petition is nothing but a thinly veiled attempt to protract the proceedings and evade the consequences of the applicant's



action. The petition is a result of vague assertions and misconceived legal arguments that have already been considered and rejected by the courts below. He submitted that the applicant's persistence in pursuing this line of argument, despite its clear lack of merit, is indicative of a deliberate strategy to abuse the legal process and waste the precious time of this Hon'ble Court. Counsel for the respondent further submitted that the application filed by the applicant in the Courts below under Section 142 of the N.I. Act was fundamentally flawed and failed to demonstrate the applicability of the said provision to the case at hand. Learned Courts below have observed this deficiency and have rightly dismissed the application. The applicant's contention that the cheque marked as "Not Negotiable" renders the provisions of Section 138 inapplicable is a misinterpretation of the law and "not negotiable" marking on a cheque merely restricts its transferability but does not negate the underlying debt or liability and the applicability of the Section 138, if other conditions are satisfied and submits that it is just and expedient to dismiss the petition of petitioner.

5. I have heard learned counsel for the parties at length and perused the record.

6. The core issue involved in the present petition is whether a cheque marked as "Not Negotiable" is excluded from the purview of Section 138 of the N.I. Act. Section 138 of the N.I. Act criminalizes the dishonour of a cheque issued towards discharge of a legally enforceable debt or liability, subject to fulfillment of the statutory requirements. The expression "*cheque*" has been defined under Section 6 of the N.I. Act and there is no exclusion carved out for cheques bearing the endorsement "*Not Negotiable*". The endorsement "*Not Negotiable*" does not render the cheque non-existent or invalid. It merely restricts the transferee from



acquiring a better title than that of the transferor, as contemplated under Section 130 of the N.I. Act. The drawer's obligation to honour the cheque remains unaffected. The judgment relied upon by the petitioner in *Durga Shah Mohal Lal Bankers (supra)* rather supports the settled legal position that a cheque remains a negotiable instrument unless its negotiability is expressly destroyed by law. Even then, such endorsement does not extinguish the drawer's liability arising from the issuance of the cheque. The trial Court has rightly observed that the question as to whether the cheque was issued towards a legally enforceable debt and whether the statutory requirements under Section 138 are satisfied are matters of evidence and cannot be decided at an interlocutory stage by invoking Section 142 of the N.I. Act. The revisional Court has also correctly appreciated the legal position and has not committed any jurisdictional error warranting interference. The inherent powers under Section 482 Cr.P.C. are to be exercised sparingly and only to prevent abuse of the process of law or to secure the ends of justice. In the present case, no such exceptional circumstance is made out.

7. Accordingly, this petition being devoid of merits is hereby **dismissed**.

(HIMANSHU JOSHI)
JUDGE