

(2017) 03 GUJ CK 0222
In the Gujarat High Court
Case No : 5810 of 2015

DHAVAL RAJENDRASING ATALIA

APPELLANT

Vs

STATE OF GUJARAT & Anr

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Negotiable Instruments Act, 1881](#), [Section 138](#) - Dishonour of cheque for insufficiency, etc., of funds in the account

Citation : (2017) 03 GUJ CK 0222

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : JIT P PATEL, PATHAK

Judgement

1. The respondent No.2-original complainant, although served with the notice of rule issued by this Court, has chosen not to remain present before this Court either in person or through an advocate and oppose this application.
2. By this application under section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused seeks to invoke the inherent powers of this court praying for quashing of the proceedings of the Criminal Case No.7033 of 2014 pending in the court of the learned Chief Judicial Magistrate, Ahmedabad for the offence punishable under section 138 of the N.I. Act.
3. It appears from the materials on record that the complainant is a private limited company. The complainant offered employment to the applicant-accused herein. At the time when the accused accepted the employment, he entered into an agreement in writing. One of the terms and conditions of the contract reads as under; "(11) The party of the second part agrees to serve with the party of the first part up to 24 (Twenty Four) months calculated from the date mentioned in clause 2. The party of the second part agrees to furnish non interest bearing security deposit equivalent to 2 months consolidated rate into 2 parts I.e. 50%

by way of Cash / FD in the name of party of the first part and balance 50% by way of cheque in the name of the party of the first part. The party of the second part has already furnished non interest bearing security deposit of Rs.12,000/- (Rupees Twelve Thousand Only) to the party of the first part. The party of the second part authorizes the party of the first part to deduct the additional non interest bearing security deposit from consolidated rate in single installment as and when rate will be increased. The non interest bearing security deposit will be refundable only after 3 months on successful fulfillment of clause no.1 and all the other conditions of this contract agreement."

4. It appears that at that point of time, i.e., at the inception, the applicant herein had issued a blank cheque, duly signed by him, in favour of the Company towards the security. In the midst of the employment, i.e., before the expiry of 24 months of initial service, the applicant tendered his resignation.

5. On 9th June, 2014, the company informed the applicant about his intention to leave the job in the following words. " Dear Dhaval,

With reference to your resignation dated 9th June, 2014 with immediate effect this is to inform you that as per contract executed between you and company, you are required to serve 60 working days notice period before leaving the job.

So, you are requested to resume the duty immediately and continue your job and complete 60 days notice period before leaving the job. If you failed to do so, it will be treated as per terms and conditions of contract agreement.

Thanks,

Ankur Agrawal."

6. It appears that the blank cheque, which was handed over to the company by the applicant herein, was filled up and presented in the Bank. In the wake of the controversy, the applicant instructed the Bank to stop the payment.

7. On 11th July, 2014, the applicant informed the Company as under; "To,

The Aurhozied Signatory,

HR Department,

Multi Mantech International Ltd.

Ahmedabad.

Respected sir,

With reference to your letter MM/HRD/JULY/02 received on 10.07.2014, it is to state that I have worked with your company till 05.06.2014. I have resigned from the duty on 05.06.2014. with immediate effect.

As per your policy I am ready to pay 2 month salary as a security deposit as a part of contract condition as a part of my resignation I have already given 2

month salary as a security deposit of my salary i.e. deduction in the form of 1/3 of my salary for 3 months and second one is my salary for the Month of May 2014 laying with you.

So, from the above matter it seems that there is no breach of contract from my side and hence there is no requirement to liquidate my cheque of Axis Bank laying with you.

Further with reference to the last meeting with Mr. Ankur Agarval (HR Manager/ Authorized Signatory) has said that there is no requirement to deposit the cheque and company will return the cheque to me at the earliest as I have already given my 2 month salary. But till date no action/efforts has been done regarding the return of cheque by your company. With a resultant to that I have made necessary procedure to stop payment of my cheque which is laying with you.

If you will still deposit the cheque in my account then you will be responsible for the further course of action.

Moreover, my 5 days salary (1st June 2014 to 5th June 2014 is still not paid by you."

8. Having regard to the materials on record and the chronology of the events narrated above, I am of the view that the applicant cannot be fastened with the liability of the dishonour of the cheque in question under section 138 of the N.I. Act.

9. In the result, this application is allowed. The proceedings of the Criminal Case No..7033 of 2014 pending in the court of the learned Chief Judicial Magistrate, Ahmedabad are hereby quashed. Rule is made absolute to the aforesaid extent. Direct service is permitted.