

**Signaps and anr. Vs. Bumpy Udyog**

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**SooperKanoon Citation :** [sooperkanoon.com/684585](http://sooperkanoon.com/684585)

**Court :** Delhi

**Decided On :** Feb-05-2008

**Reported in :** III(2008)BC94; 149(2008)DLT185

**Judge :** S. Muralidhar, J.

**Acts :** [Negotiable Instruments Act 1881](#) - Sections 130, 138 and 142; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

**Appeal No. :** Crl. M.C. 2612/2003 and Crl. M. As 3489-90/2003

**Appellant :** Signaps and anr.

**Respondent :** Bumpy Udyog

**Advocate for Def. :** Ravi Sharma, Adv.

**Advocate for Pet/Ap. :** Sudhanshu Batra and; Bhuvan Gugnani, Advs

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**S. Muralidhar, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr PC) filed by the petitioners seeking quashing of Criminal Complaint No. 214 of

2002 (Bumpy Udyog v. Signaps) pending in the court of the learned Additional Sessions Judge, Delhi (ASJ) and an order dated 28th May, 2003 passed by the learned ASJ dismissing the application for recalling of the summoning order dated 15th September, 2000 passed by the learned Metropolitan Magistrate, Delhi (MM).

2. At the outset, learned Counsel for the Petitioners fairly states that in view of the judgment of the Supreme Court in *Adalat Prasad v. Rooplal Jindal* 113(2004) DLT 356 he cannot really challenge the impugned order of the learned ASJ declining to recall the summoning order and that the only remedy available to the accused is to challenge the summoning order by way of the present petition under Section 482 Cr PC. He accordingly confines his arguments in the present case to questioning the summoning order and seeking the quashing of the criminal complaint.

3. The case of the complainant M/s Bumpy Udyog was that towards discharge of the liability of the Petitioner No. 1 proprietary firm (of which Petitioner No. 2 is the proprietor) towards supply of goods to it by the complainant, a cheque 413391 dated 14th December, 1999 for a sum of Rs. 28,35,164.84 was drawn on The Greater Bombay Co-operative Bank Limited in favor of the complainant by the petitioners. The said cheque when presented to the bank for payment was returned dishonoured with the remarks Refer to Drawer as well as Please do not present again by the returning the memo dated 21st December, 1999. Thereafter the complaint was filed against the petitioners under Section 138 read with Section 142 of the [Negotiable Instruments Act 1881](#) (NI Act) in the court of the learned MM, New Delhi.

4. According to the Petitioners here, the complainant has willfully suppressed in the complaint fact that there was a written agreement dated 3rd August, 1998 executed between the complainant and the Petitioners here which was for a period of one year initially and extendable for a further period on the mutual written consent of the parties. A reference is made to Clauses 12 and 13 of the said agreement which read as under:

12. That the party of the 2nd part will deposit 5 Blank Cheque No. 413390, 413391, 413392, 413393 and 413394 of the Greater Bombay Co-operative Bank Limited, Bhuleshwar Branch, Mumbai 400 002 which is given to the 1st party as a

security of the Agency Agreement.

13. Further more the 1st party shall not deposit the above said cheques until and unless a written instruction is received from the party of the 2nd part.

5. It is contended by learned Counsel for the Petitioners that in reply to the application filed by the Petitioners for recalling the summoning order dated 15th September 2000 passed by the learned MM, the Respondent did not deny the fact of the agreement. On the other hand, the complainant took the following inconsistent stand in paras 1, 2 and 2(a):

1. That an agreement was executed between the complainant and the accused on 3rd August, 1998 and as per para 2 of the said agreement, it is stated that the term of the agreement is only for one year initially. However, by virtue of mutual written consent of the parties, the term can be extended for another period after the expiry of one year.

That as per the default of the accused, the agreement was neither renewed nor was extended for another year and therefore, the said agreement with regard to Clauses 12 and 13 has got no effect.

2. That as per the trade practice the security cheques which were given by the accused to the complainant were deposited after the expiry of the said agreement and that too on 14.12.1999. The said security cheque was presented only when despite of numerous visits by the complainant and calls made by the complainant to the accused for the balance payment, the accused gave a go-by signal to present the cheque as the complainant did not want the agreement to be extended as per the default made by the accused in making the payment.

2(a) Para (a) of the application is correct to the extent that the agreement was executed on 3rd August, 1998 but that too only for a period of one year but after the expiry of the one year, the agreement was rescinded and therefore, the clause of the agreement does not come into picture at any given time. The said agreement was valid till 2nd August, 1999 and the cheque was presented on 14.12.1999 when despite of numerous visits and calls made by the complainant

to the accused for making payment of the balance amount of Rs. 28,35,164.84 paise, the accused asked the complainant to present the security cheque on telephone and the complainant on the said assurance presented the said cheque and the same was dishonoured. thereforee, the said complaint was filed.

6. It is stated that the admitted position being that the blank cheques were given as a security and one of those cheques was presented for payment, no liability under Section 138 NI Act would be attracted. Reliance has been placed on the judgment of the Gujarat High Court in Shanku Concretes Pvt. Limited v. State of Gujarat 2000 CrI LJ 1988 and of the Andhra Pradesh High Court in Taher N. Khambat v. Vinayak Enterprises (86) 1996 Comp Cas 471. Learned Counsel for the Petitioners points out that although in para 6 of the complaint, a case was sought to be made out as if the accused had issued the cheque in question at the instance of the complainant, the written agreement made it abundantly clear that the said cheque was a blank cheque given as security.

7. Learned Counsel appearing for the Respondent on the other hand points out that the agreement itself was valid only for one year and that it was only at the instance of the accused that one of the cheques issued by the accused after the expiry of the agreement was presented for payment. He submits that once the cheque signed by the accused was dishonoured when presented for payment, the offence under Section 138 NI Act stood attracted. Relying upon the judgments of this Court in Pankaj Narang v. State 2006 (1) LRC 426 (Del), and City Palace Electronics v. Vijay Chhabra 2006 (1) JCC 17 and of the Supreme Court in K.N. Beena v. Muniyappan : 2001 CriLJ4745 it is submitted that any defense by way of Explanationn for the dishonour of the cheque could be considered only at the time of trial. It is submitted that there is no case made out for interference with the criminal proceedings under Section 482 Cr PC.

8. The principal ground on which the Petitioners seek quashing of the criminal complaint is that the cheque in question was offered as security in terms of the agreement dated 3rd August, 1998 and thereforee, the dishonour of such cheque which was presented in contravention of Clause 13 of that agreement cannot attract the offence under Section 138 NI Act. Clause 2 of the said agreement

expressly states that the agreement is valid for one year and further extension can only be by the mutual written consent of the parties. Nothing has been brought on record to show that there was any such mutual written consent of the parties for extension of the agreement. Consequently, Clauses 12 and 13 of the said agreement, which required the first party (the complainant) not to deposit the cheques given as security unless there was a written instruction received from the second party (the accused) would not be enforceable beyond the period of one year during which the said agreement subsisted. There is in other words nothing to show as at present that the said agreement was subsisting at that time when the cheque was presented for payment.

9. It would also be a matter of evidence whether the cheque which was presented for payment was a blank cheque which subsequently filled up by the complainant or was in fact issued by the accused after the expiry of the agreement. These are disputed facts which cannot be resolved in proceedings under Section 482 Cr PC but will have to await trial. The submission of the counsel for the petitioner that these are self-evident facts cannot be accepted. In *Shanku Concretes* the agreement in question was subsisting at the time of the presentation of the cheque in question. As far as the decision of the Andhra Pradesh High Court in *Taher N. Khambat* is concerned, it was in a criminal appeal against an acquittal and the High Court had at that stage the benefit of the evidence whether blank cheques had been subsequently filled up and presented for payment. Neither decision is therefore of assistance to the petitioner here.

10. No ground is made out for interference by this Court to quash the criminal proceedings in exercise of its powers under Section 482 Cr PC. It is however clarified that no observation made by this Court is intended to influence the findings that may be arrived at by the trial court upon an independent assessment of the evidence that comes on record before it.

11. There is no merit in this petition and it is dismissed as such with no order as to costs. The pending applications also stand dismissed.