

**Subedar Sumer Singh Vs. Amit Enterprises**

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**Court :** Rajasthan

**Decided On :** Jul-26-2002

**Reported in :** 2003CriLJ1143; RLW2003(4)Raj2638

**Judge :** A.C. Goyal, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138, 139 and 141

**Appeal No. :** Crl. Revn. No. 478 of 1998

**Appellant :** Subedar Sumer Singh

**Respondent :** Amit Enterprises

**Advocate for Def. :** S.K. Jain, Adv.

**Advocate for Pet/Ap. :** Rajendra Prasad, Adv.

**Disposition :** Revision petition dismissed

**Judgement :**

**A.C. Goyal, J.**

1. Relevant facts for decision of this Criminal Revision Petition are that the complainant-respondent instituted a complaint under Section 138 of 'The [Negotiable Instruments Act, 1881](#)' (for short 'the Act of 1881') in the Court of learned Additional Chief Judicial Magistrate No. 6, Jaipur City, Jaipur on 13.3.1993

against the accused appellant and one Mahaveer Singh with the averments that the complainant Amitabh is the proprietor of the complainant concern carrying on business of supply of cement. The accused Sumer Singh commenced purchasing cement from the complainant. Initially, he was making the payment. Subsequently, the complainant supplied cement on credit to the accused Sumer Singh. Giving some of the details of four cheques which were returned unpaid, it was averred that Sumer Singh along with Sandeep Bhatnagar and Naresh came to the office of the complainant on 23.3.1993 and assured the payment of earlier dues with interest and requested for further supply of cement and delivered two cheques respectively for Rs. 10,000/- and Rs. 13,800. The complainant presented the cheques in the bank account of accused Sumer Singh. Both the cheques were dishonoured with the remark of insufficient funds in the bank account. The complainant went to the accused Sumer Singh but he did not make the payment. Thereafter registered notice was sent which was received by him on 12.8.1983. The accused Sumer Singh replied this notice on 30.8.1983 but no payment was made.

2. Learned Magistrate after conducting enquiry under Sections 200 and 202, Cr. P.C. took cognizance against Sumer Singh and discharged another accused Mahaveer Singh vide order dated 12.1.1994. Accused Sumer Singh pleaded not guilty. The complainant apart from himself, examined P.W.2, Naresh Agarwal and PW 3 Sandeep Bhatnagar. The accused was examined under Section 313, Cr.P.C. He denied the evidence and stated that he did not purchase any goods from the complainant. The accused Sumer Singh apart from himself examined DW 2 Raghuvir Singh, DW 3 Jaipal, and DW 4 Nanji Lal. After hearing learned Counsel for the parties, learned Magistrate vide judgment dated 7.11.1996 convicted and sentenced the accused Sumer Singh under Section 138 of the Act, 1881 and sentenced him to a fine of Rs. 25,000/-, in default to undergo three months' simple imprisonment. It was also directed that this amount shall be given to the complainant as compensation.

3. The accused Sumer Singh filed Criminal Appeal No. 82/1997 which was dismissed by Special Judge (Sati Prevention) Jaipur City, Jaipur vide judgment dated 20.5.1998. Hence this revision.

4. Learned Counsel for the accused petitioner raised a number of grounds that this complaint was not maintainable as the firm of the complainant was not registered one, that the accused petitioner was partner of the firm M/s. Mahaveer Sales Corporation, Jaipur and the partnership firm was not made a party, that another partner Sh. Mahaveer Singh was the incharge of the business of the firm, M/s. Mahaveer Sales Corporation, Jaipur and thus he alone was liable, that the accused petitioner had signed some blank cheques which were given to the second partner Mahaveer Singh to use such cheques as and when necessity arises, that the accused petitioner's uncle had died on 15.3.1993, hence the accused had gone to his village and he was not present at Jaipur on 20.3.1993, that there are material contradictions in the statements of PW 2 Naresh and PW 3 Sandeep Bhatnagar on the point of delivery of the cheques to the complainant and that there was no existing liability on the accused petitioner, learned Counsel for the complainant-respondent supported the impugned judgments.

5. I have given thoughtful consideration to the submissions made by learned Counsel for the parties. The firm of the complainant was not a partnership firm, rather it was a proprietary concern. This fact is specifically stated in the title of the complaint itself and was proved by the complainant in his statement. But this fact is found correct that accused petitioner Sumer Singh and co-accused Mahaveer Singh were partners of M/s. Mahaveer Sales Corporation. The complainant himself admitted this fact in the title of the complaint as well as in the body of the complaint, though according to the averments in the complaint it was accused petitioner who was carrying on day to day business of this firm. But this contention cannot be accepted that the partnership firm was a necessary party and in absence of the partnership firm the accused petitioner was not liable. Three categories of persons are brought within the purview of the penalliability according to the provisions of Section 141 of the Act, 1881:(1) company/ firm, (2) everyone who was incharge of and was responsible for the business of the company, and (3) any other person who is a Director or a Manager or Secretary or Officer of the company, with whose connivance or due to whose neglect the company has committed the offence. It is nowhere provided in Section 141 that in absence of the company the person who was responsible to the company and for the conduct of the business of the company would not be liable. Both the Courts below came

to concurrent finding on the point that it was accused petitioner Sumer Singh who was carrying on day-to-day business of the firm. It is not disputed that both the cheques were signed by the accused petitioner Sumer Singh and minor contradictions in the statement of PW 2 Naresh Agarwal and PW 3 Sandeep Bhatnagar as to the place where the cheques were delivered by the accused petitioner to the complainant and as to whether the cheques were filled in by the accused petitioner in their presence or not are not material. Next contention is also without any merit that the accused petitioner signed the blank cheques and there was no existing liability upon the accused petitioner. The provisions of Section 139 of the Act, 1881 provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability. Issuance of cheques by the accused petitioner under his signatures was found proved by both the Courts below. The accused petitioner admitted his signatures on both the cheques. The Hon'ble Supreme Court in *K.N. Beena v. Muniyappan and Anr.*, VII (2001) SLT 387=WLC (SC) Criminal 2002, 105, held that in view of the provisions of Section 139 of the Act, burden to show that cheque was not issued for a debt or liability lies only on accused. Similar view was taken by this Court in *Sunil Kumar Tyagi v. State of Rajasthan and Anr.*, WLC (Rajasthan) UC 2002, page 378.

6. In view of the above discussion, there is no merit in this revision. Consequently, this revision petition is dismissed.

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