

**SUPREME COURT OF INDIA**

Vinod Tanna

Vs.

Zaheer Siddiqui

(G.B. Pattanaik and Ruma Pal JJ.)

17.09.2001

**ORDER**

**G.B. Pattanaik, J.**

1. Leave granted.

2. This appeal is directed against the judgment of the Bombay High Court refusing the prayer of the accused to quash the criminal proceedings. A proceedings had been initiated under Section 138 read with Section 142 of the *Negotiable Instruments Act* (for short 'the Act'), alleging that the cheque which the drawer had given had not been honoured by the Bank.

3. The gravamen of the accused-petitioner's case before the High Court was that the grounds on which the cheque had not been honoured, would not constitute offence under Section 138 of the Act, inasmuch as the ingredients that the account-holder had no sufficient funds at the credit of his account or that the amount in the cheque exceeded the amount which the account-holder had at his credit, had not been established in the case. Even there was no direction from the drawer to stop payment and the only ground on which the cheque appears to have not been honoured is that the drawer's signature was incomplete.

4. The High Court, however, having noted the aforesaid contentions, being of the opinion that in view of the judgment of this Court in *Modi Cements Ltd v. Kuchil Ku-mar Nandi*,<sup>1</sup>, refused to quash the proceedings. Hence, the present appeal by the accused.

5. Mr. Bobde, learned Senior Counsel appearing for the appellants, contends that the High Court has failed to appreciate the ratio of the judgment of this Court in *Modi Cements* case (supra) inasmuch as in paragraph 11 of the said judgment, the Court had recorded a conclusion that it is in complete agreement with the legal proposition enunciated in *Electronics Trade and Technology Development Corpn. Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd.*<sup>1</sup>, as well as *K.K. Sidharthan v. T.P. Praveena Chandran*<sup>2</sup>, fs. In these two cases, the cheque in question had been dishonoured because of insufficiency of funds or the amount exceeded the arrangement made with the Bank and in *Electronics Trade and Technology Development Corpn. Ltd* (supra), the cheque had not been honoured because of the direction from the drawer regarding stop payment. In fact, a plain reading of Section

138 of the Act makes it crystal clear that unless the conditions precedent mentioned therein are satisfied, the said penal provision cannot be attracted. In this view of the matter and on the admitted facts, as referred to in paragraph 5 of the impugned judgment, we have no hesitation in coming to the conclusion that the High Court committed error in relying upon the judgment of this Court in *Modi Cements (supra)* and refusing to quash the criminal proceeding. We, accordingly, set aside the impugned judgment of the High Court, quash the criminal proceeding and allow the criminal appeal.

<sup>1</sup>(1996-2) 113 PLR 332 (SC)

<sup>2</sup>(1997-1)115 PLR 233 (SC)