

**HIGH COURT OF GUJARAT**

**J V GANTRA**

*Versus*

**RAMESHCHANDRA NATHALAL MACHCHHAR**

**Date of Decision:** 29 April 1994

**Citation:** 1994 LawSuit(Guj) 126

**Hon'ble Judges:** [K J Vaidya](#)

**Eq. Citations:** **1994 2 GLR 1136**, 1994 3 Crimes(HC) 1081, 1994 CrLR 431, 1994 2 GCD 587

**Case Type:** Misc Criminal Application

**Case No:** 1112 of 1990

**Subject:** Criminal

**Editor's Note:**

**Criminal Procedure Code, 1973 (II of 1974)-S.482-Quashing of process- Indian Penal Code, 1860 (XLV of 1860)-Ss.500, S.34 & S.114-Cheque dishonoured with endorsement Refer to Drawer despite sufficient balance is an act not only an actionable civil wrong but also a criminal offence inviting punishment for defamation under S.500 of I. P. C.- Whether the cheque was dishonoured under genuine, bona fide mistake or not cannot be considered at the stage of quashing the process under S.482 of the Cri. Pro. Code.**

**When the Bank is having sufficient balance in the account of that drawer of cheques then in that case it is legally and morally bound to honour the same. There is indeed no option left with the Bank even to defer or delay the same. Despite this fact if the Bank refuses to honour the cheque by putting an endorsement Refer to the drawer then such an act is not only an actionable civil wrong but the same is also as well criminal offence inviting punishment for defamation under Sec. 501) as defined under Sec. 49 of the Indian Penal Code It is for this reason that in the instant case when the Bank knew that there is a sufficient balance in the account of the drawer and still it went on to dishonour that is to say refuse to pay the cheque-amount by putting an endorsement to the effect Refer to the drawer it prima facie constitute offence under Secs. 499 and 500 of the Indian Penal Code and the Bank officer cannot be permitted to say to be believed that his act of Refer to the**

**drawer was innocent one and that he had no criminal intent to defame the complainant. (Para 5) When a person is having sufficient balance with the concerned Bank account and yet if the cheque is dishonoured it cannot be disputed to be anything less than defamation unless at the trial accused makes out a case of some genuine honest bona fide mistake. Whether the cheque was dishonoured under genuine bona fide mistake or not is always a question which is required to be tried by raising the issues before the trial Court and can be decided only after examining the evidence of the complainant and his witnesses if any and the material that is produced to challenge the same by the accused. Such defence of the honest bona fide genuine mistake cannot be taken into consideration at the stage of quashing the process under Sec. 482 of the Code. (Para 5.1) Jayson v. Midland Bank (1) Pyke v. Hibernion Bank (2) and Baker v. Australia & New Zealand Bank (3) referred to. Treatise referred: (1) Sheldon & Fidler's Practice and Law of Banking 11 Edn by P. J. M. Fidler.**

**Acts Referred:**

[Indian Penal Code, 1860 Sec 500, Sec 34, Sec 114](#)  
[Code Of Criminal Procedure, 1973 Sec 482](#)

**Final Decision:** Application allowed

**Advocates:** [R C Jani](#), [S V Raju](#), [K V Shelat](#)

**Cases Cited in (+): 1**

**Cases Referred in (+): 4**

**VAIDYA, J.**

**[1]** "Whether on the presentation of a cheque drawn by a person no less than an Account-holder himself, if the same is dishonoured by the Bank with an endorsement 'Refer to drawer' despite the availability of sufficient balance in the account to honour the same, the said act of 'Refer to drawer' can be said to be an offence of defamation lowering the esteem of the drawer of the cheque in the eyes of the drawee, in particular, and the person who went to encash the same, and member of the public in general, who came to know about the same?" This in short, is the important question which arises for consideration in the context and background of the following facts.

**[2]** To state few relevant facts as far as they are necessary to decide the question raised above respondent No. 1-Rameshchandra Nathalal Machchhar. partner of Messrs J. P. Fabrics, Jetpur, filed a Criminal Complaint before the learned J.M.F.C, Jetpur, being Criminal Case No. 1208 of 1990 against the petitioner J. V. Ganatra, Manager, Central

Bank of India at Jetpur and three other superior Bank officers at other stations, inter alia alleging that the said Bank had refused to honour various cheques presented to it at Jetpur, despite there being sufficient balance in his account. It is the case of the complainant that on as many as three different dates, as stated in detail in the complaint itself, he presented three different cheques, two of which were sent alongwith Accountant (Mehtaji) for the encashment of the same which were repeatedly dishonoured with an endorsement 'Refer to the drawer'. This unfortunate incident of dishonouring cheques was brought to the notice of the higher-officers, viz., (1) The Zonal Manager, Central Bank of India, Ahmedabad, (2) The Regional Manager, Central Bank of India, Rajkot and (3) The General Manager, Central Bank of India, Bombay by writing them separate registered letters. Thereafter, another notice was also sent demanding apology for defaming the complainant. Despite this correspondence, since the superior officers refused to pay any heed, the complainant was constrained to file a complaint against the petitioner and three other Bank Officers, as stated above, for the alleged offence punishable under Secs. 500, 34 and 114 of the Indian Penal Code, wherein on the basis of the same, the learned J.M.F.C. by an order dated 24-9-1990 issued process, giving rise to the present application for quashing the same.

**[3]** Mr. R. C. Jani, the learned Advocate for the petitioner submitted that merely because the cheques were returned with an endorsement 'Refer to the drawer', the same does not amount to the defamation within the meaning under Secs. 499 and 500 of the Indian Penal Code. Mr. Jani further submitted that the endorsement to the effect 'Refer to drawer' in absence of criminal intent cannot be said to have constituted any offence of defamation, and when that is precisely so, there was indeed no question of issuing the process. In this view of the matter, issuance of the process being the patent abuse of the process of law, the same deserves to be quashed and set aside.

**[4]** As against the above, Mr. S. V. Raju, the learned Advocate for the respondent No. 1 submitted that the very act of consistently dishonouring as many as four cheques, despite the sufficient balance, with an endorsement 'Refer to the drawer\*' by the Bank has lowered the image and esteem of the complainant in the eyes of Mehtaji, who went to encash the same, and that of the parties in whose favour such cheques were drawn, as well as the members of the public in general whosoever came to know about the same. Obviously, under such circumstances an endorsement of 'Refer to drawer' undoubtedly has damaged the business image of the complainant in his business circle and thereby it is a pure and simple act/offence of defamation. On the basis of these submissions, Mr. Raju, finally urged that by no stretch of imagination can it be said that the learned Magistrate has committed any error in issuing the process against the petitioners herein and other officers of the Bank.

**[5]** Having heard the learned Advocate at length, at the very outset, it requires to be stated that the submissions made by Mr. Jani have no substance worth the name and that the submissions made by Mr. Raju deserve to be accepted in toto. When the Bank is having sufficient balance in the account of that drawer of cheques, then in that case, it is legally and morally bound to honour the same. There is indeed no option left with the Bank even to defer or delay the same. Despite this fact, if the Bank refuses to honour the cheque by putting an endorsement 'Refer to the drawer' then such an act is not only an actionable civil wrong but the same is as well Criminal offence, inviting punishment for defamation under Sec. 500 as defined under Sec. 499 of the Indian Penal Code. It is for this reason that in the instant case, when the Bank knew that there is a sufficient balance in the account of the drawer, and still it went on to dishonour, that is to say refuse to pay the cheque amount, by putting an endorsement to the effect 'Refer to the drawer', it prima facie constitute offence under Sec. 499 and 500 of the I.P.C. and the Bank officers cannot be permitted to say to be believed that his act of 'Refer to the drawer' was innocent one and that he had no criminal intent to defame the complainant. On perusing the complaint, it clearly transpires that all the necessary ingredients required to constitute the offence of defamation under Sec. 499 of the Indian Penal Code are prima facie quite satisfied. When that is so, it is indeed not possible for this Court to say that the process issued against the petitioner-Manager of the Bank by any stretch of imagination can be said to be illegal,

Whether the endorsement 'Refer to drawer' despite the availability of the sufficient fund in the Bank account can be said to be an act of defamation or not, following three decisions cited at the Bar by Mr. Raju, the learned Advocate for the complainant may be usefully referred to. In 1930, these words 'Refer to drawer' were referred to the jury in *Jayson v. Midland Bank*, reported in 1968 (1) Lloyd's Rep. 409, and considered to be libellous. Similarly, in *Fyke v. Hibernian Bank*, 1950 R 195, the Court in the first instance ruled that the words 'Refer to drawer' : 'present again' and even the words 'present again' were reasonably capable of defamatory meaning and this ruling was upheld by the Court of appeals. In one more decision, the Supreme Court of New Zealand in *Baker v. Australia and New Zealand Bank*, reported in 1958 NZLR 907, the words 'present again' were analysed to convey the meaning that it tend to lower a person in the estimation of right minded members of society in general. Though the concerned law reporters as such were not made available to this Court, however, Mr. Raju has quoted the extracts of the aforesaid judgments from a Book, viz., 'Sheldon and Fidler's Practice and Law of Banking' written by P.J.M. Fidler. Eleventh Edition. Whatever has been observed by the foreign Courts regarding the 'Refer to drawer' is nothing new, but a question of simple common sense and it supports the view already taken by this Court. When a person is having sufficient balance with the concerned bank account and

yet, if the cheque is dishonoured, it cannot be disputed to be anything less than defamation unless at the trial, accused makes out a case of some genuine, honest, bona fide mistake. Whether the cheque was dishonoured under genuine, bona fide mistake or not is always a question which is required to be tried by raising the issues before the trial Court and can be decided only after examining the evidence of the complainant and his witnesses, if any, and the material that is produced to challenge the same by the accused. Such defence of the honest, bona fide, genuine mistake cannot be taken into consideration at the stage of quashing the process under Sec. 482 of the Code.

**[6]** It may be stated that so far as other three accused, viz; (1) The Zonal Manager, (2) The Regional Manager and (3) The General Manager of the Central Bank of India are concerned, there is nothing in the complaint on the basis of which it can be said that they were party to the defamation and in that view of the matter, the process against them requires to be quashed and set aside.

**[7]** In the result, this application is partly allowed. The impugned order issuing process against Mr. J. V. Ganatra, Manager, Central Bank of India is hereby confirmed. The process issued against the Zonal Manager, Ahmedabad, the Regional Manager, Rajkot and the General Manager, Bombay is hereby quashed and set aside. Office is directed to communicate this order immediately.

Application partly allowed.