

'REPORTABLE'

*** HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. M.C. No. 3099/2007 & Crl M. A. No. 11142/07

Date of decision : 09.05.2008

VINOD JANESHWAR AGGARWAL Petitioner
! Through : Mr. Subhash Chand, Adv.

Versus

\$ HAIERS APPLIANCES P.LTD. Respondent
^ Through : Mr. Anil Aggarwal, Adv.
Mr. Sanjay Mishra, Adv.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) Whether reporters of local paper may be allowed to see the judgment? | |
| (2) To be referred to the reporter or not? | Yes |
| (3) Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. M/s. Haier Appliances Pvt. Ltd. filed a complaint under Section 138 of Negotiable Instrument Act (hereinafter referred to as Act) against the petitioner Vinod Janeshawar Aggarwal. Allegations in the complaint are that petitioner as proprietor of M/s Ankit Sales Corporation Pune was dealer of the respondent company. Allegedly there was some settlements between the parties for the past dues of

the dealership and interest thereon. M/s Ankit Sales Corporation issued cheque bearing No. 186880 in the name of M/s Haier Appliances India Pvt. Ltd./the complainant. This cheque on presentation was dishonoured vide return memo dated 20.4.2006 as Ankit Sales Corporation had stopped the payment of the cheque. On dishonourment of cheque, respondent issued notice of demand dated 6.5.2006 which was served upon petitioner and subsequently the complaint was filed.

2. Present petitioner disputes his liability to pay the amount under the said cheque and has challenged the maintainability of the criminal complaint and prayed for quashing of the complaint No. 3917/2006 titled as M/s Haier Appliances Pvt. Ltd. v. Vinod Aggarwal and proceedings conducted therein on the following grounds:

A. He is not the proprietor or partner of M/s Ankit Sales Corporation and Sh. Sushil Goyal and Smt. Asha Goyal are the partners to the knowledge of the complainant.

B. Petitioner had no business dealings with the complainant and there was no such settlement as alleged. The cheque was issued by M/s. Ankit Sales Corporation as a security with an endorsement at the back of the cheque that the cheque was for security purposes and it was not to be encashed. The cheque does not bear the signatures of the petitioner.

C. The cheque has been misused by the complainant and the figures in words and numbers as well as the date on the same were fabricated by the complainant and the said cheque was issued in blank at the time of start of dealership.

3. He has prayed that the complaint and the proceedings conducted therein are liable to be quashed.
4. The grounds on which the maintainability of the complaint as well as the proceedings conducted therein are challenged are in fact the defences which the petitioner can and should raise before the learned MM during the trial of the case. This court in exercise of its writ jurisdiction under Section 482 of

Cr.P.C. cannot consider the defences as raised by the petitioner in the present petition. It is only when the evidence is adduced that it can be brought to light if M/s Ankit Sales Corporation is partnership firm or if petitioner is partner of the same. Similarly only trial will be the decisive factor if the cheque was not signed by the petitioner or whether it could not have been presented for encashment. Again it is a matter of evidence if the impugned cheque was misused by the complainant by manipulating the words and figures as well as date on the cheque which was allegedly issued in blank by M/s Ankit Sales Corporation at the time of start of dealership.

5. At the time of summoning the accused, court is only to see the prima facie evidence as placed on record by the complainant and even after summoning of the accused on his appearance at the stage of giving notice under Section 251 Cr.P.C. or for consideration of charge, court is only to assess the prima facie evidence as produced on the record by the complainant or the prosecution as the case may be. Defence of the accused cannot be looked into at the

said stage and it is only if the court is of the opinion that prima facie evidence placed on record is such that it might not lead into conviction of the accused after trial or is weak in nature and does not prima facie indicate the seriousness of the allegations of the offence alleged to have been committed, the court can dismiss the complaint or discharge the accused if summoned after pre summoning evidence.

6. Under these circumstances, the present petition is not maintainable as it is for the petitioner to prove his defences during the trial of the case. I find no merits in the petition and also no reason to interfere in the proceedings being conducted by the trial court in the complaint case No. 3917/2006 under Section 138 of Negotiable Instruments Act. Hence, the petition is hereby dismissed.

7. Trial court record be sent back.

**ARUNA SURESH
(JUDGE)**

**May 09, 2008
jk**