

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

+ **Crl M.C. No. 3872/2007 & Crl.M.A.14183/2007**

Date of decision : 01.05.2008

RAJAN JAIN Petitioner
! Through : Mr. Pardeep Chaudhary, Adv.

Versus

\$ RAJ KISHORE GUPTA & OTHERS..... Respondents
^ Through : Mr. R.K. Jain, Adv. for R-1.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

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

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Petitioner Rajan Jain has sought quashing of the proceedings in complaint case No.151/1, dated 30.03.2007, registered under Section 138 Negotiable Instruments Act pending adjudication in the court of Shri Jagdish Kumar, learned Metropolitan Magistrate,

Tis Hazari Courts, Delhi and summoning orders dated 30.03.2007. After considering the evidence placed on the record and hearing learned counsel for the complainant, learned trial Magistrate was pleased to summon the accused Rajan Jain (Petitioner herein) for offence punishable under Section 138 N.I. Act. Petitioner has sought quashing of the complaint as well as this order on various grounds but he admits that he had issued two cheques of Rs.2,50,000/- each to Smt. Sunita Raj and Smt. Kumud Gupta being cheque Nos. 782840 and 781294 on 15.10.2005. A Memo of understanding (MOU), Agreement and Sale Deed etc. were executed between the parties on 25.01.2006. On the same day Petitioner issued two cheques of Rs.11,00,000/- each being cheque Nos.038804 and 038805 and gave them to Smt. Sunita Raj and Smt. Kumud Gupta. On the same day two more cheques bearing No.395579 and 395580 for Rs.10,00,000/- each were given in the name of Raj Kishore Gupta and Sanjeev Raj respectively allegedly towards security amount.

2. A cheque of Rs.11,00,000/- was encashed on 31.01.2006, but the cheques issued to the complainant

were dishonoured on presentation. Petitioner also failed to give the payment of the said cheques to the respondent within stipulated period despite demand notice. According to the Petitioner he had sent two letters to the respondent on 25.05.2006 and 29.06.2006 respectively seeking return of the said cheques for Rs.10,00,000/- each. Petitioner also wrote a letter to the Manager, Dena Bank, Chawri Bazar, Delhi on 18.07.2006. Since cheques were dishonoured, respondent No.1 served notice under Section 138 N.I.Act upon the Petitioner on 15.02.2007 and 26.02.2007 respectively. These notices were duly replied by the Petitioner on 05.03.2007. Thereafter, impugned complaint has been filed by the respondent No.1 on 26.03.2007. Petitioner also filed suit for perpetual injunction against Smt. Sunita Raj and Smt. Kumud Gupta etc. in January, 2007.

3. The impugned complaint is only in respect of cheque bearing No.395579 for Rs.10,00,000/- drawn on Dena Bank, Chawri Bazar, Delhi issued in favour of Shri Raj Kishore Gupta, the complainant in this case. The Petitioner has sought quashing of the complaint on the

ground that an Agreement was entered into between him and the respondent's wife and sister-in-law on 25.01.2006 and the Sale Deed was also executed between the petitioner, his father and the respondent's wife and sister-in-law. On the same day a MOU was also executed between the parties and Petitioner and his father agreed to give cheques for Rs.11,00,000/- each to the vendors amounting to Rs.22,00,000/- and the cheques were issued in favour of Smt. Kumud Gupta and Sunita Raj. As per the mutual agreement two cheques for Rs.10,00,000/- each were issued in favour of the respondent and his son Sanjeev Raj with the assurance that in case the cheques for Rs.11,00,000/- lacs each were encashed, the respondent shall return back the cheques for Rs.10,00,000/- each issued in his name and in the name of his son Sanjeev Raj. However, after the encashment of cheques for Rs.11,00,000/- each, the respondent failed to return back the cheques and presented them for encashment against the terms and conditions contained in the MOU executed between the parties. He has, therefore, denied his liability to pay cheque amount which was issued to ensure the

encashment of cheque for Rs.11,00,000/- issued in the name of wife and sister-in-law of the respondent.

4. The ground as raised in the petition seeking quashing of the complaint are different defences which are required to be proved by the Petitioner in the trial court. Once he admitted his signatures on the impugned cheque for Rs.10,00,000/- there is a presumption which goes against him that the cheque was issued for consideration. The allegations of misuse of cheque and criminal breach of trust are a matter of trial. It is for the Petitioner to rebut this presumption during the trial of the case and the defences cannot be looked into by this court at this stage in the present proceedings invoking the jurisdiction of this court under Section 482 of the Criminal Procedure Code.

5. Under these circumstances, I find no infirmity or illegality in the order dated 30.03.2007 passed by the learned trial Magistrate. I also do not find any plausible reason to quash the proceedings in the said complaint case. Therefore, I find no merit in the petition and the same is accordingly dismissed.

6. Attested copy of the order be sent to the trial court as well as to the State. Trial court record be sent back immediately.

**ARUNA SURESH
(JUDGE)**

**May 01, 2008
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