

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 990/2013**

Reserved on: 07th May, 2014

% **Date of Decision: 3rd July, 2014**

MANJIT SINGH Petitioner
Through: Mr. Bhavneet Singh, Adv.

versus

S K MEHTA & CO. Respondents
Through: Mr. S.K. Pandey, Adv.

**CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH**

JUDGMENT

VED PRAKASH VAISH, J.

1. By way of this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks quashing of Complaint Case No.476/1/2009 titled as 'M/s. S.K. Mehta & Co. vs. Manjit Singh' for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act').

2. The brief facts of the case are that the respondent herein/complainant filed a complaint under Section 138 of the NI Act on the allegations, inter alia, that the respondent is engaged in the profession of imparting professional services to its clients in the field of auditing, taxation and financial consultation and other related jobs. The accused/petitioner had availed the services of the complainant in

respect of settlement/compromise of loan with Central Bank of India. The complainant facilitated the said settlement by preparing necessary data and proposal as desired by the bank. The complainant got the movable and immovable assets of the accused revealed and also attended the bank offices from time to time and did all possible efforts to facilitate the settlement. The complainant raised the bill bearing No.SKM/48/02-03 dated 03.03.2003 for Rs.10 lakhs in respect of the professional job/charges. The accused/petitioner avoided the payment of the said bill on one pretext or the other. However, after lot of persuasion, the accused issued cheque bearing No.352144 drawn on HDFC Bank dated 03.09.2007 for Rs.10 lakhs (Rupees Ten Lakhs) in favour of the complainant. The complainant/respondent deposited the said cheque and same was dishonoured on 02.02.2008 with the remarks 'insufficient funds'. It is also alleged that despite service of statutory notice dated 23.02.2008, the petitioner failed to make payment of the amount of cheque.

3. After recording pre-summoning evidence, the petitioner was summoned by the trial Court for the offence under Section 138 of the NI Act vide order dated 18.08.2008.

4. The counsel for the petitioner contended that according to the respondent /complainant, bill was issued on 03.03.2003 and the cheque was issued on 03.09.2007. The cheque issued in lieu of a time barred debt does not come within the definition of a legally enforceable debt. On reading of Section 138 of the Negotiable Instrument Act and its explanation, it is apparent that as per the scheme of the Act, the offence under Section 138 of the NI Act can be fastened on an accused only if he commits default in repayment of the dishonoured cheque which was

issued in discharge of a legally recoverable debt. It was also submitted that the cheque in question was never issued to the respondent and respondent somehow had misused the same.

5. The counsel for the petitioner relied upon judgment of the Hon'ble Supreme Court of India in **Sasseriyl Joseph vs. Devassia**, *SLP (Crl.) No.1785/2001* decided on 10.09.2001. In the said case, the following observations were laid down:-

“We have heard learned counsel for the petitioner. We have perused the judgment of the High Court of Kerala in Criminal Appeal No. 161 of 1994 confirming the judgment/order of acquittal passed by the Addl. Sessions Judge, Thalassery in Criminal Appeal No. 212 of 1992 holding *inter alia* that the cheque in question having been issued by the accused for due which was barred by limitation the penal provision under Section 138 of the Negotiable Instrument Act is not attracted in the case.

On the facts of the case as available on the records and the clear and unambiguous provision in the explanation to Section 138 of the Negotiable Instrument Act the judgment of the lower appellate court as confirmed by the High Court is unassailed.

Therefore, the special leave petition is dismissed.”

6. On the other hand, learned counsel for the respondent/complainant urged that in view of Section 25 of the Contract Act, once the cheque was issued by the petitioner in lieu of admitted liability, the dishonour of a cheque issued by him and on payment thereof despite service of statutory notice, makes out a case for the offence under Section 138 of the NI Act and, therefore, the complaint filed by the respondent was maintainable.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and learned counsel for the respondent.

8. To appreciate the contentions of the parties, it is necessary to reproduce the relevant provisions of Section 138 of the Negotiable Instruments Act, which reads as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case

may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

9. At this juncture, it would also be appropriate to take note of Section 18 of the Limitation Act which deals with the acknowledgement and explanation of limitation which reads as under:-

“18. Effect of acknowledgment in writing.

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.”

10. A bare perusal of the aforesaid provision clearly goes to show that for analyzing the limitation of a civil liability beyond a period of three years, the acknowledgment, if any, must be there before period of limitation is over, which is not the case.

11. In the instant case, it is alleged that the respondent/complainant raised a bill dated 03.03.2003 for a sum of Rs.10 lakhs in respect of professional job/charges. The petitioner kept avoiding payment of the

bill. However, on 03.09.2007, the petitioner issued a cheque of Rs.10 lakhs which was dishonoured.

12. The petitioner had taken a stand that the dishonoured cheque was not in relation to any enforceable debt and, as such, the respondent could not be held guilty under Section 138 of the NI Act. Insofar as the dishonoured cheque is concerned, the stand taken by the petitioner is that the cheque was never issued by him and the respondent had somehow misused the cheque. This stand was specifically taken by the respondent in the course of trial and, as such, it was necessary to determine that whether the cheque in question was issued by the petitioner or not.

13. There are two questions involved in the present case:

- (i) Whether the recovery of the amount in the present case is within limitation?
- (ii) Whether the cheque in question is barred by limitation.

These questions raise a triable issue and these questions could not have been gone into in a proceeding under Section 482 of the Cr.P.C. It is a matter of trial.

14. For the aforesaid reasons, both the parties are at liberty to adduce evidence and the trial Court will consider the aforesaid issues in accordance with law.

15. In view of the above, the petition stands disposed of.

Crl.M.A. No. 3094/2013 (Stay)

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

July 3rd, 2014/gm