



CNR: KAHC010138782021

NC: 2026:KHC:47915
CRL.P No. 2720 of 2021

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 3RD DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE RAVI V HOSMANI
CRIMINAL PETITION NO.2720 OF 2021**

BETWEEN:

SRI S N MAHADEVA
S/O LATE NAGAPPA
AGED ABOUT 51 YEARS
R/A NO.207
2ND MAIN ROAD
SINGASANDRA VILLAGE
BEGUR HOBLI
BENGALURU - 560 068.

...PETITIONER

(BY SRI K.R.KRISHNAMURTHY, ADVOCATE)

AND:

SMT.RAJAMMA
W/O SRI YELLAPPA
AGED ABOUT 61 YEARS
R/A NO.92
CHIKKALAKSHMAIAH LAYOUT
HOSUR ROAD
BENGALURU - 560 029.
REP BY HER POWER OF ATTORNEY HOLDER
SRI Y SRINIVAS
AGED ABOUT 43 YEARS
S/O SRI YELLAPPA
R/A NO.92, CHIKKALAKSHMAIAH LAYOUT
HOSUR ROAD, BENGALURU - 560 029.

...RESPONDENT

(BY SRI ONKARAPPA N D., ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO SET
ASIDE AND QUASH THE ORDER DATED 29.08.2018 PASSED BY

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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THE XIX ADDL.C.M.M., BENGALURU IN C.C.NO.23930/2018, WHEREUNDER, THE COURT BELOW HAS REGISTERED THE PRIVATE COMPLAINT FILED BY THE RESPONDENT IN PCR NO.11331/2018 AGAINST THE PETITIONER FOR THE OFFENCE P/U/S 138 OF N.I. ACT BY TAKING COGNIZANCE (i.e. ANNEXURE-A) AND ISSUED SUMMONS TO THE PETITIONER AND TO CONSEQUENTLY DISMISS THE COMPLAINT FILED BY THE RESPONDENT IN THE COURT BELOW IN PCR NO.11331/2018 (C.C.NO.23930/2018) FOR THE OFFENCE P/U/S 138 OF N.I.ACT AND ALL FURTHER PROCEEDINGS THEREON.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 29.08.2018 passed by XIX Additional Chief Metropolitan Magistrate, Bangalore in CC no.23930/2018 summoning petitioner in PCR no.11331/2018 filed for offence punishable under Section 138 of Negotiable Instruments Act, 1881 (**NI Act**), this petition is filed.

2. Sri K.R. Krishnamurthy, learned counsel for petitioner submitted that petitioner was accused in PCR



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no.11331/2018 alleging that cheque no.663021 dated 25.06.2018 drawn on Axis Bank Limited, Kormangala Branch, Bangalore for Rs.1,50,00,000/-, when presented for collection returned dishonoured with endorsement 'drawer signature differs' on 26.06.2018 and thereafter though, statutory notice issued was served, accused failed to make payment within time. It was submitted that on said complaint, learned Magistrate passed impugned order summoning accused. Said order was defective for several reasons firstly, on ground that there were no reasons assigned as held required by Hon'ble Supreme Court in case of **Mehmood Ul Rehman v. Khazir Mohammad Tunda and Ors.**, reported in **(2015) 12 SCC 420** and secondly, on ground that cheque in question was issued in pursuance of a compromise decree in OS no.4794/2017 before Lokadalath between parties.

3. It was submitted that paras - 9 and 10 of compromise decree imposed condition on complainant to withdraw RFA no.279/2014 and also provided that if terms and conditions of compromise decree were not fulfilled and if cheque issued were to be dishonoured for whatsoever reason,



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defendants no.3 to 5 therein undertook to deposit entire compensation amount received by them before back to KIADB and plaintiffs were entitled to withdraw compensation amount from KIADB.

4. It was submitted, subsequent to decree and after 3 cheques were honoured, a claim by third party with regard to property under acquisition came to be raised affecting title of complainant with regard to property in question. Therefore, when complainant would not have title over property in question, he could not execute sale deed in respect of property in favour of accused and consequently, cheque in question cannot be stated to have been issued towards a legally enforceable debt. It was submitted, learned Magistrate had failed to note said fundamental defect before issuing order of summons. On above grounds sought for allowing petition.

5. On other hand, Sri Onkarappa N.D., learned counsel for respondent (complainant) sought to oppose. It was submitted that complaint in question was filed for offence punishable under Section 138 of NI Act on account of cheque



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issued by accused having been dishonoured. It was submitted that at time of issuance of order of summons, learned Magistrate had perused complaint, sworn statement and Exhibits by noting availability of sufficient grounds to proceed ordered summons, same was not defective. It was submitted that whether there existed legally enforceable debt would be matter for trial and would not be a ground for quashing at this stage. On above grounds sought for dismissal of petition.

6. Heard learned counsel, perused impugned order as well as material on record.

7. This petition is by accused for quashing of summoning order on ground of lack of application of mind and reasons by relying on decision in **Mehmood Ul Rehman's** case (supra). Ratio laid down by Hon'ble Supreme Court in **Mehmood Ul Rehman's** case (supra) would impose an obligation on learned Magistrate while dealing with a matter under Section 190 (1) (c) of CrPC on a private complaint as distinguished from a proceeding under Section 190 (1) (b) of CrPC which would be on a police report, to record reasons for



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taking cognizance and issuance of summons as would indicate application of mind.

8. Order impugned herein reveals that learned Magistrate on perusal of complaint, sworn statement and Exhibits-P1 to P11 found sufficient grounds to proceed against accused for offence under Section 138 of NI Act. Issue would be whether same indicate application of mind. Three Judges' Bench of Hon'ble Supreme Court in ***Sunil Bharti Mittal v. CBI***, reported in **(2015) 4 SCC 609** has held as follows:

"51. *On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*

52. *A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it*



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cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. *However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.*

54. *However, there has to be a proper satisfaction in this behalf which should be duly recorded by the Special Judge on the basis of material on record. No such exercise is done. In this scenario, having regard to the aforesaid aspects coupled with the legal position explained above, it is difficult to sustain the impugned order dated 19-3-2013 in its present form insofar as it relates to implicating the appellants and summoning them as accused persons. The appeals arising out of SLP (Crl.) No. 2961 of 2013 and SLP (Crl.) No. 3161 of 2013 filed by Mr Sunil Bharti Mittal and Ravi Ruia respectively are, accordingly, allowed and order summoning these appellants is set aside. The appeals arising out of SLPs (Crl.) Nos. 3326-27 of 2013 filed by Telecom Watchdog are dismissed."*

9. The distillate of above observation would be an order directing issuance of summons on perusal of material and expressing satisfaction about existence of *prima-facie* case,



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cannot be interfered unless it is demonstrated that same were *ex-facie* incorrect. In instant case, contention of non-application of mind is sought to be bolstered with ancillary contention about inability of complainant to convey in favour of accused against consideration under cheque. However, as on date of issuance of cheque, contingency of claim by third party did not exist and there was complete meeting of mind of parties about receiving cheque and execution of sale deed. Therefore, subsequent event cannot be ground to contend non-existence of legally enforceable debt, moreso when compromise decree continues to operate between parties. However this observation is on *prima-facie* examination of matter and non-existence or frustration of legally enforceable debt would be matter for elucidation in trial and challenge against summoning order does not bear merit.

10. Hence, petition is ***dismissed***, reserving liberty to petitioner to urge all contentions before trial Court at appropriate stage.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 2