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

CNR No. DLHC011733352014

+ **CRL.M.C. 5886/2014**

KIMAYA ENERGY LTD. & ORS.

.....Petitioners

Through: Mr. Manish Jha, Sr. Adv. with Mr.
Shashi Shanker, Ms. Pooja, Mr.
Arnav Dhama, Mr. Himanshu, Advs.

versus

STATE & ANR.

.....Respondents

Through: Mr. Manoj Pant, APP.
Mr. Vivek Gurnani and Ms. Snehal
Kaila, Advs. for R2.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

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31.08.2026

1. This hearing has been done through hybrid mode.
2. This matter has been taken up today as 27.08.2026 was declared a Court holiday.
3. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') has been filed seeking quashing of **Complaint Case No. 3735/1** under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), titled "*Ravinder Kalia v. M/s Kimaya Energy Ltd. & Ors.*", and the proceedings emanating therefrom. The Petitioners were arrayed as accused Nos. 1 to 5 in the said complaint. *Vide* order dated 26.03.2011, the learned MM took cognizance and summoned the Petitioners. The said order dated 26.03.2011



has not been specifically assailed in the present petition.

BRIEF FACTUAL BACKGROUND

4. The dispute arises out of a transaction concerning premises bearing Shop/Office No.112A, Centrum Plaza, Sector-53, Gurgaon, Haryana. A lease agreement dated 07.09.2010 was executed between Respondent No.2/Complainant and Petitioner No. 2, Mr. Gaurav Khullar. The agreement records a lease term of three years and an 18-month lock-in period. Clause 1.5 provides that, where the lease has commenced and the lessee terminates it during the lock-in period, rent equivalent to the remaining lock-in period, including the notice period, would be payable. Clause 2.1 records that physical and peaceful possession of the premises was handed over to the lessee on 04.09.2010 and that the lease commenced from the said date. Clause 2.2, however, provides that the lease would commence upon offer of physical and peaceful possession after completion of the fit-outs to the satisfaction of the lessee.

5. In connection with the aforesaid transaction, four cheques bearing Nos.039751, 039753, 039807 and 039810, for sums of Rs.2,36,799/-, Rs.63,936/-, Rs.94,720/- and Rs.25,574/- respectively, aggregating to Rs.4,21,029/-, were handed over. Upon presentation, the cheques were returned unpaid for insufficiency of funds. Respondent No. 2 thereafter issued a statutory demand notice dated 27.01.2011. In their reply dated 12.02.2011, the Petitioners took the stand that the premises had not been furnished as assured, that the agreement had not been finalised and that possession had not been handed over after completion of the fit-outs. At the same time, the said reply refers to amounts and cheques having been handed over towards



security and advance rent and also records payment of maintenance and electricity charges.

6. Respondent No. 2 thereafter instituted the complaint under Section 138 of the NI Act on 14.03.2011. The complaint alleges, inter alia, that accused Nos.2 to 5 were looking after the business and day-to-day affairs of accused No.1-company and had participated in the negotiations relating to the premises. It was further alleged that the cheques in question had been issued towards partial payment of rent and discharge of the liability arising from the transaction. During the course of trial, Respondent No.2 was cross-examined on several dates. The present challenge is founded substantially upon the answers elicited during such cross-examination, which, according to the Petitioners, are inconsistent with the case pleaded in the complaint.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

7. Learned Senior Counsel for the Petitioners submits that the complaint proceeds on the specific case that the four cheques were issued towards partial payment of rent, whereas Respondent No. 2 subsequently stated in his cross examination that, except one cheque towards security, the remaining cheques were towards rent for the lock-in period. It is argued that a claim for the unexpired lock-in period is, in substance, a claim for damages and could not constitute a legally enforceable debt unless first adjudicated and crystallised. Thus, according to the Petitioners, no legally enforceable liability corresponding to the cheque amount existed on the date when the cheques were presented.

8. Learned Senior Counsel further submits that the lease itself was conditional upon completion of the fit-outs and delivery of physical and



peaceful possession to the satisfaction of the lessee. It is contended that the requisite fit-outs were never completed, possession was never handed over and, consequently, the lease never commenced. It is also urged that although the complaint refers to premises Nos.112 and 112A, Respondent No. 2 admitted during cross-examination that the lease executed by him pertained only to premises No. 112A and that he had no written authority to deal with premises No. 112. According to the Petitioners, the aforesaid statements strike at the very foundation of the complaint.

9. Qua accused Nos. 3 to 5, learned Senior Counsel submits that the complaint merely attributes designations to them without establishing their role in the affairs of accused No.1 - company. Reliance is placed upon portions of the cross examination wherein Respondent No. 2 stated that he did not possess documentary proof to show that accused Nos. 3 and 4 were Directors or that accused No. 5 was the Financial Controller of the company. It is further pointed out that although the complaint alleges participation of all the accused in the negotiations, Respondent No. 2 stated at one stage of his cross examination that he had not personally met accused Nos. 3 and 4. It is, therefore, submitted that the proceedings, at least qua accused Nos. 3 to 5, deserve to be quashed.

10. As regards the objection that the summoning order dated 26.03.2011 has not been independently challenged, learned Senior Counsel submits that the present petition was filed after the cross examination of Respondent No. 2 brought the aforesaid contradictions on record. It is submitted that there is no prescribed period of limitation for invoking jurisdiction under Section 482 CrPC and that the prayer seeking quashing of the complaint and all consequential proceedings is sufficient to grant the relief sought.



11. Learned Senior Counsel for the Petitioners has placed reliance upon *Krishna Lal Chawla v. State of Uttar Pradesh*, (2021) 5 SCC 435; *Delhi Race Club (1940) Ltd. & Anr. v. State of Uttar Pradesh & Anr.*, Criminal Appeal No. 3114 of 2024; *Alka Khandu Avhad v. Amar Syamprasad Mishra*, (2021) 4 SCC 675; *Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539; *M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39; *Vineet Kumar v. State of Uttar Pradesh*, (2017) 13 SCC 369; *Rajnish Kumar Biswakarma v. State of NCT of Delhi*, SLP (Crl.) No.5290/2024; *Bharatbhai K. Patel v. C.L. Verma*, 2002 SCC OnLine Guj 314; *Rangappa v. Sri Mohan*, (2010) 11 SCC 441; *Enforcement Directorate v. Ajay Bakliwa*, 2002 SCC OnLine Del 1166; *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.*, (2005) 8 SCC 89; *National Small Industries Corporation Ltd. v. Harmeet Singh Paintal & Anr.*, (2010) 3 SCC 330; *Sunil Todi & Ors. v. State of Gujarat & Anr.*, (2022) 16 SCC 762; *Pradnya Pranjal Kulkarni v. State of Maharashtra & Anr.*, 2025 SCC OnLine SC 1948; *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr.*, (2023) 1 SCC 578; and *Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.*, 2025 SCC OnLine SC 1947.

SUBMISSIONS ON BEHALF OF RESPONDENTS

12. *Per contra*, learned counsel for Respondent No. 2 submits that the present petition seeks adjudication of disputed questions of fact under the guise of proceedings under Section 482 CrPC. At the outset, it is contended that the judicial order dated 26.03.2011, whereby cognizance was taken and summons were issued, has not been challenged. It is further pointed out that the complaint and the summoning order are of the year 2011, whereas the



present petition came to be filed only in the year 2014 after the trial had progressed.

13. On merits, learned counsel submits that issuance of the cheques and the signatures thereon are not disputed. It is emphasised that the Petitioners' own reply dated 12.02.2011 acknowledges that an agreement had been signed and that amounts and cheques had been handed over towards security and advance rent. The reply also records payment of maintenance and electricity charges. It is, therefore, submitted that the Petitioners' present case that the transaction never commenced and that they never entered or used the premises cannot be accepted without appreciation of evidence.

14. Learned counsel further relies upon Clause 2.1 of the lease agreement, which expressly records handing over of physical and peaceful possession on 04.09.2010 and commencement of the lease from that date. Reliance is also placed upon the 18-month lock-in clause. It is submitted that whether the fit-outs were complete, whether possession had in fact been delivered, whether the lease had commenced and whether the cheques represented security, advance rent or rent relatable to the lock-in period are all questions which require appreciation of evidence. It is further pointed out that Mr. Sanjay Dutta Gupta, the intermediary/broker, has also been examined before the learned Trial Court and has supported the case that the premises were furnished.

15. Learned counsel for Respondent No. 2 has placed reliance upon ***Pradnya Pranjal Kulkarni v. State of Maharashtra & Anr., 2025 SCC OnLine SC 1948; HMT Watches Ltd. v. M.A. Abida & Anr., (2015) 11 SCC 776; Vihan Exims Company Pvt. Ltd. & Ors. v. State, Govt. of NCT of Delhi & Ors., 2023 SCC OnLine Del 3782; M. Gurunathan v. R. Amutha, (2005)***



13 SCC 58; Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458; S. Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd. & Ors., (2008) 13 SCC 678; Constellation Enterprises Pvt. Ltd. & Anr. v. P.E.C. Ltd., (2006) 87 DRJ 558; Sanjay Dalmia & Ors. v. State & Anr., 2005 SCC OnLine Del 1284; and Womb Laboratories Private Limited v. Vijay Ahuja & Anr., 2019 SCC OnLine SC 2086.

ANALYSIS AND FINDINGS

16. This Court has heard learned counsel for the parties and perused the record.

17. The issue which arises for consideration is narrow. At this stage, the Court is not required to determine whether the defence raised by the Petitioners would ultimately succeed. The question is whether the material relied upon by them is of such an unimpeachable character that continuation of the proceedings under Section 138 of the NI Act would itself amount to an abuse of process warranting interference under Section 482 CrPC.

18. In **Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) & Anr., (2022) 20 SCC 661**, the Supreme Court considered a challenge to proceedings under Section 138 of the NI Act where the accused contended that the cheques were contingent/security cheques and did not represent a legally enforceable liability. The Supreme Court held that the burden of establishing absence of an existing debt or liability is to be discharged at trial and that the statutory presumption attending issuance of the cheque must receive due weight. It was further held that, where facts are disputed, a quashing Court ought not to undertake a detailed enquiry into the merits of



the competing versions. A factual defence warranting termination of the prosecution without trial must be founded upon material of unimpeachable quality which, by itself, rules out the allegations in the complaint.

19. Tested on the aforesaid principle, the present petition does not meet the threshold for quashing. The principal defence of the Petitioners is that the lease never commenced because the fit-outs were not completed and possession was never delivered. The record itself presents competing material on this issue. Clause 2.2 of the lease agreement refers to commencement of the lease upon offer of possession after completion of the fit-outs to the satisfaction of the lessee, whereas Clause 2.1 of the very same agreement records that physical and peaceful possession had been handed over on 04.09.2010 and that the lease commenced from that date. The Petitioners rely upon the former clause together with their assertion that the stipulated condition was never fulfilled, whereas Respondent No. 2 relies upon the latter clause and maintains that the premises were already furnished and possession had been delivered. The intermediary has also entered the witness box. Accepting one version over the other would necessarily require appreciation of evidence, which is the function of the learned Trial Court.

20. The controversy regarding the nature of the cheques stands on the same footing. The Petitioners describe them as security cheques which could not have been presented once the transaction failed. Their own reply to the statutory notice, however, refers to amounts and cheques having been handed over towards security and advance rent. Respondent No. 2, during cross examination, stated that one cheque was towards security and the remaining cheques were towards part payment of rent for the lock-in period. Whether a legally enforceable liability existed on the date of presentation can, therefore,



be determined only after examining whether the lease had commenced, whether possession had been delivered, what obligations had arisen under the agreement and the purpose for which the respective cheques had been issued. These are intertwined questions of fact which cannot be conclusively determined in proceedings under Section 482 CrPC.

21. The submission that the amount relatable to the unexpired lock-in period is merely a claim for unliquidated damages also cannot be considered in isolation from the disputed factual foundation of the transaction. Whether the amount claimed represents damages requiring prior adjudication or an amount which had become payable under the contractual arrangement necessarily depends upon the nature and effect of the lease, its commencement and the obligations which had accrued thereunder. Acceptance of the Petitioners' submission at this stage would require this Court to first adjudicate these very disputed questions.

22. The alleged change in the case of Respondent No.2 from "*partial payment of rent*" in the complaint to "*rent for the lock-in period*" during cross examination also does not furnish a ground for quashing. Whether the subsequent statement constitutes a material contradiction, an explanation of the liability pleaded in the complaint, or otherwise affects the credibility of the witness is a matter for appreciation of evidence. Individual answers elicited during cross examination cannot be severed from the remaining testimony and documentary material and treated as conclusive proof that the complaint has become unsustainable.

23. The contention concerning premises Nos. 112 and 112A is also essentially evidentiary. The lease placed on record pertains to premises No. 112A, whereas the complaint contains a reference to premises Nos. 112 and



112A. Respondent No. 2 has been extensively cross examined regarding his right and authority in respect of the two premises. The effect of this discrepancy upon the alleged liability arising from the cheques must be assessed on the evidence as a whole. The discrepancy, by itself, does not render continuation of the complaint an abuse of process.

24. The submission that no disputed question of fact arises because the Petitioners rely only upon the cross examination of the Complainant is equally untenable. Cross examination is itself part of the evidence. Whether an answer amounts to an unequivocal admission, whether a contradiction is material, whether an explanation offered by the witness is acceptable and what consequence follows therefrom are matters of appreciation of evidence. Proceedings under Section 482 CrPC cannot be converted into a premature evaluation of testimony already recorded before the learned Trial Court.

25. In **Mr. Rakesh Y.S. v. Govt. of NCT of Delhi & Anr., 2024:DHC:5834**, this Court dealt with proceedings under Section 138 of the NI Act which had reached the stage of cross-examination. The accused sought quashing on the ground that the cheques were security cheques and that the material relied upon by him established absence of liability. This Court declined interference, holding that the defence raised by the accused, when controverted by the complainant, required proof by evidence. The Court also noticed that issuance of the cheques was admitted, the summoning order had not been challenged and the matter had reached the stage of cross examination where the accused sought to establish his defence.

26. The present case stands on a similar footing. The order dated 26.03.2011 taking cognizance and summoning the Petitioners has not been specifically challenged. This circumstance is not being treated as an absolute



bar to exercise of jurisdiction under Section 482 CrPC; it is, however, relevant when the relief now sought is founded substantially upon an assessment of evidence recorded subsequent to the summoning order. Similarly, the delay in approaching this Court is not, by itself, sufficient to reject the petition. The petition fails on the more fundamental ground that the relief sought cannot be granted without adjudicating contested facts and weighing the evidence already before the learned Trial Court.

27. The challenge qua accused Nos. 3 to 5 also does not merit interference at this stage. The complaint does not rest merely upon their respective designations. It expressly alleges that accused Nos. 2 to 5 were looking after the business and day-to-day affairs of accused No.1-company, had participated in the negotiations and that the cheques were issued with their consent, knowledge and approval. The Petitioners rely upon subsequent answers in cross-examination to contend that Respondent No. 2 had no documentary proof regarding their status or role and had given inconsistent answers as to the persons whom he had personally met. Those answers may have a bearing upon the ultimate proof of the allegations, but their evidentiary value cannot be conclusively assessed in the present proceedings.

28. There is a material distinction between a defence which may ultimately succeed at trial and a defence which, on its face and on unimpeachable material, renders continuation of the prosecution legally untenable. The present case falls in the former category. Exercise of jurisdiction under Section 482 CrPC cannot substitute the High Court for the Trial Court in determining the credibility of witnesses, reconciling alleged contradictions, construing contested contractual obligations or deciding whether the statutory presumption under the NI Act stands rebutted.



29. Applying the principles laid down in ***Rathish Babu (supra)*** and ***Rakesh Y.S. (supra)***, this Court is of the considered view that the material relied upon by the Petitioners does not furnish an unimpeachable basis for terminating the complaint. The pleas raised by the Petitioners constitute matters of defence which must be adjudicated by the learned Trial Court upon appreciation of the evidence in its entirety.

30. It is borne out from the record that Petitioner No. 3, Mr. Harish Khullar, expired on 03.02.2023 and the death certificate placed on record has also been verified. The present petition, therefore, does not survive *qua* Petitioner No. 3 and is disposed of as infructuous to that extent.

31. Accordingly, the present petition is dismissed *qua* Petitioner Nos. 1, 2, 4 and 5 and is disposed of as infructuous *qua* Petitioner No. 3.

32. The interim order dated 12.08.2015 stands vacated. Pending application(s), if any, also stand disposed of.

33. The learned Trial Court shall proceed with the matter in accordance with law, uninfluenced by any observations made in the present order.

34. The order be uploaded on the website *forthwith*.

MADHU JAIN, J

AUGUST 31, 2026/m