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

\+ CRL.M.C. 2115/2016

PAYAL ARORA ..... Petitioner

Represented by: Mr. Anil Kumar Singh, Adv.

versus

THE GOVT OF NCT OF DELHI & ANR ..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% **26.10.2016**

Crl.M.A. 8974/2016

Exemption allowed subject to just exceptions.

CRL.M.C. 2115/2016 & Crl.M.A. 8973/2016 (stay)

1. By the present petition the petitioner seeks quashing of the order dated 14th January, 2013 passed by the learned Metropolitan Magistrate whereby he has been summoned for offence punishable under Section 138 of the Negotiable Instruments Act (in short the NI Act) and the order dated 20th February, 2016 passed by the learned Additional Sessions Judge dismissing the revision petition filed by the petitioner against the order dated 14th January, 2013. The respondent No.2 filed a complaint under Section 138 read with Section 142 of the NI Act alleging that cheques worth ₹34 lakhs had been dishonoured. After summoning the petitioner on 14th January, 2013 the learned Metropolitan Magistrate framed notice on 23rd March, 2014.

2. The grounds on which the petitioner challenges the order of summoning and the revisional order are that the petitioner has no connection with the complainant Sunita Chaudhary and her husband used to supply cloth for fabrication to one Amit Pahuja. It is stated that cheques signed by the petitioner and her husband were given to Amit Pahuja during the business transactions. The said cheques have been mis-utilized by Amit Pahuja in connivance with Sunita Chaudhary, the respondent No.2. It is also claimed that no legal demand notice was received by the petitioner. Further even on the allegations in the complaint, the respondent No.2 has not shown that any chit agreement was executed between the subscriber and there is non-compliance of the safeguards laid down under Chit Fund Act. Thus penal offences cannot be attracted. Learned counsel for the petitioner also urged that in similar cases notice issued had been discharged by the Trial Court.

3. In the complaint, the respondent No.2 alleged that she was the sole proprietor of Ms. Padmawati and Associates engaged in the business of committee (Finance Pooling) and was duly assessed with the Income Tax Department. According to the complainant, the petitioner approached her to join the Committee and thus she joined various groups as noted in the complaint. As per the norms all members were required to provide post-dated cheques. According to the complainant the petitioner withdrew the payment of said shares in the respective groups and in discharge of that liability handed-over four post-dated cheques which on presentation were dishonoured on the ground "*Refer to Drawer*". In the complaint it was also asserted that a legal notice was sent to the petitioner through registered AD

courier, however despite service of legal notice the petitioner did not make the payment.

4. On the allegations made in the complaint, the learned Trial Court committed no error in issuing summons to the petitioner. The defence of the petitioner that the respondent No.2 misused the cheques issued by her to one Amit Pahuja is to be probablized by the petitioner during the trial and merely on the basis of affidavit of the petitioner before this Court that there is misutilization of the cheques, the proceedings in the complaint cannot be quashed.

5. As in respect of the fact that proceedings in the other cases have been dropped against the petitioner a perusal of the same would reveal that in the four complaints filed by Sunita Chaudhary against one Rakesh Bakolia after notice was framed the Court noted that the chit fund company was required to obtain a certificate of incorporation from Registrar of Companies and thereafter start the chit fund business. Whether registration has been obtained by the respondent No.2 or not would be an issue to be decided at the stage of trial. Hence I find no reason to interfere with the order summoning the petitioner or the impugned order passed by the learned Additional Sessions Judge.

6. Petition and application are dismissed.

MUKTA GUPTA, J.

OCTOBER 26, 2016
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