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

+ **CRL.M.C. 2522/2016**

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Decided on: 20th July, 2016

VEENA RANI

..... Petitioner

Represented by: Mr. Vijay Chopra, Advocate.

versus

RENU KAPOOR

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 10811/2016 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 2522/2016 and Crl. M.A. No. 10810/2016 (Stay)

1. By the present petition the petitioner seeks quashing of complaint No. NI-1013/14 under Section 138 Negotiable Instruments Act, 1881 (in short 'NI Act') titled as *Smt. Renu Kapoor vs. Smt. Veena* and the proceedings pursuant thereto.

2. Renu Kapoor filed a complaint under Section 138 NI Act alleging that she had advanced a loan of ₹60,000/- to the petitioner who was her first cousin for the operation of her mother in the form of loan which the petitioner undertook to return in the month of February, 2012 and a sum of ₹1.40 lakhs to her sister Smt. Madhubala. For repayment of loan of

₹60,000/- the petitioner had issued post dated cheque bearing No. 493726 dated 1st February, 2012 for an amount of ₹60,000/- drawn on Canara Bank. The said cheque was presented for encashment but the same was dishonored vide memo dated 9th February, 2012 with the remark '*refer to drawer*'. A legal notice dated 24th February, 2012 was issued however, the same was received back unserved with the endorsement '*adhura pata he*'. The respondent again presented the cheque which was dishonored on 15th March, 2012 with the remark '*contact drawer*' and thereafter a statutory demand notice dated 17th March, 2012 was issued through the counsel which was duly received by the petitioner however, the loan amount was not repaid and thus the complaint.

3. The respondent/complainant examined herself and exhibited the documents. On summons being issued the petitioner entered appearance and sought recalling of the summoning order/dropping of the complaint. The plea taken by the petitioner in the application was that no statutory notice was served at all and no notice was dispatched at the correct address. Further there was no existing debt or liability at the time of presentation of the cheque for encashment, the husband of the respondent/complainant was a money lender and had obtained the amount written and signed blank cheque in question from the petitioner on 3rd May, 2008 under the influence and trust being brother-in-law, which he misused. The amount due to the respondent has already been paid to her husband in her presence at their residence. However, the cheque was not returned on the pretext that the same was misplaced. Thereafter the husband of the respondent in collusion with the respondent and her brother misused the cheque and filed the complaint which is an abuse of the process of law. The petitioner also filed

an affidavit in defence reiterating the averments in the application for recalling of the summoning order.

4. Vide the order dated 5th April, 2006 the learned Metropolitan Magistrate dismissed the application filed by the petitioner challenging the order of summoning noting therein that the perusal of the record reflects that firstly the complainant had placed on record speed post receipt as well the duly served AD card on record during the pre-summoning evidence which supports the factum of service of statutory notice and the cheque return memo Ex.CW-1/C which was dishonored on the ground of '*refer to drawer*'. Thus there was prima facie sufficient material to raise presumption of outstanding liability against the petitioner and due service of statutory notice, thus the Court was not entitled to review its own order of summoning.

5. Before this Court learned counsel for the petitioner argues that an old cheque was lying with the respondent/complainant wherein the date was filled up later on which is evident from difference in hand writing on the date and the account number. A perusal of the cheque would show that the date has been filled up with a different pen and in a different ink. Hence, the defence of the petitioner clearly shows that the complaint was false, mala fide and the proceedings qua the petitioner are liable to be dropped. Reliance is placed on para -23 of the decision reported as AIR 2015 SC 675 Pooja Ravinder Devidasani vs. State of Maharashtra and another.

6. In Pooja Ravinder Devidasani (supra) the Supreme Court noted its earlier decision in reported as 2014 AIR SCW 6328 Gunamala Sales Pvt. Ltd. vs. Anu Mehta, as under:

“23. In Gunmala Sales (P) Ltd. (2014) AIR SCW 6238) (supra) on which the learned counsel for the respondents has heavily relied, this Court at para 33 (c) held:

“In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactic, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out.”

(emphasis supplied)

7. Indubitably in case on the face of it the complaint does not disclose the ingredients of an offence to be made out against the accused or there is some evidence placed by the accused before the Court which is unimpeachable, incontrovertible or beyond suspicion, then the Court has

the jurisdiction to drop the proceedings since no case is made out against the accused.

8. In the present case, the petitioner seeks appreciation of defence evidence by this Court by pointing out the change in the ink, that the cheque book was issued in the year 2008 and it was an old cheque. I am afraid that this piecemeal appreciation of evidence cannot be done by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C. The arguments raised by the petitioner will have to be considered by the learned Trial Court after he has cross-examined the complainant/witnesses and/or led defence evidence.

9. I find no merit in the present petition.

10. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JULY 20, 2016
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