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

+ CRL.M.C. 2777/2016 and Crl. M.A. No. 11830/2016 (Stay)

ANIL KUMAR KAUSHIK

..... Petitioner

Represented by: Mr. Udayaditya Banerjee and
Ms. Parul Shukla, Advocates.

versus

DR.RAZA MOHAMMAD MUKARMI

..... Respondent

Represented by: Mr. Khalil A. Ansari and Mr.
Mohammad Akhtar, Advocates
with respondent in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

15.11.2016

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1. The respondent filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short 'NI Act') alleging therein that an advertisement was issued in Times of India on 20th August, 2015 in the English daily newspaper with regard to the admission in MBBS course. After a meeting, the respondent was assured that his son would be admitted either in Maulana Azad Medical College or Vardhman Mahavir Medical College and for this he had to arrange a sum of ₹30 lakhs. At the request of the petitioner, the respondent visited him at Uttar Pradesh along with his son Nabil where he was asked to prepare a demand draft in favour of Health Ministry and Medical Council of India. The respondent was later informed telephonically that the nomination of his son for admission at Vardhman Mahavir Medical College had been accepted and the Health

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Ministry has issued nomination letter vide letter No. 3899, MBBS-9/2015 dated 7th September, 2015. The respondent was asked to pay a sum of ₹5 lakhs which was paid in cash and as guarantee to the payment, the respondent was issued a post-dated cheque bearing 950893 dated 30th January, 2016 drawn on Punjab National Bank with the assurance that if the petitioner failed to fulfil the promise the cheque would be encashed on presentation. A further amount of ₹8 lakhs was also paid in lieu whereof a post dated cheque bearing No.950895 dated 15th November, 2015 was issued. Since the petitioner failed to fulfil the promise the two cheques were presented for encashment but the same were dishonoured vide return memo dated 2nd February, 2016 with the remarks “Funds Insufficient”. A legal notice was sent to the petitioner on 8th February, 2016 and since within 15 days thereto no payment was made, a complaint was filed.

2. The petitioner who was summoned as an accused by the learned Trial Court vide order dated 20th April, 2016 took two pleas when the matter came up for preliminary hearing on 3rd August, 2016, firstly that despite statutory notice being issued on 8th February, 2016 no complaint was filed rather a second notice was issued on 15th March, 2016 without representing the cheque, thus the complaint was barred by limitation and secondly that the dishonoured cheque, if at all, was not an enforceable debt as it was for an illegal act or an illegal promise.

3. Learned counsel for the respondent has entered appearance. Pointing out towards the various documents, learned counsel for the respondent states that the two cheques were dishonoured on 2nd February, 2016 and legal notice in this regard was issued on 8th February, 2016 which was served on

the petitioner on 10th February, 2016. Since no payment was made in the further period of 15 days from 10th February, 2016, the complaint was filed before the learned Trial Court on 15th March, 2016 which is evident from the endorsement made at page 30 of the paper-book. It is contended that the second legal notice purportedly relied upon by the petitioner was a fabricated document.

4. Whether the second legal notice is a fabricated document or not will be seen by the learned Trial Court. Suffice it would be to note that after the legal notice was sent on 8th February, 2016 and was served on 10th February, 2016, after waiting 15 days of non-payment, the complaint was filed on 15th March, 2016, that is, within the period of 30 days and hence the complaint cannot be termed as time barred.

5. Even if the second legal notice was sent on 15th March, 2016, the same is meaningless as the complaint had already been filed. Further as noted in the complaint and the legal notice the admission was on the basis of nomination and the representation made by the petitioner was that a nomination letter dated 7th September, 2015 had been issued in favour of the son of the respondent. Further the signatures were taken on various papers in favour of the Health Ministry and the Medical Council of India. Thus whether the consideration was for a legal act or illegal cannot be looked into at this stage as the same can be ascertained only during trial.

6. Finding no merit for exercising jurisdiction under Section 482 Cr.P.C. the present petition and application are dismissed.

MUKTA GUPTA, J.

NOVEMBER 15, 2016/‘vn’

