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

+ **CRL.M.C. 3991/2016**

MAHESH G

..... Petitioner

Represented by: **Mr. Shishir Pinaki and Mr.
Rajiv Kumar Sinha, Advocates.**

versus

GAGAN KATHURAI & ANR

..... Respondents

Represented by: **Mr. Amit Ahlawat, APP for the
State.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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25.10.2016

Crl. M.A. No. 16694/2016 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 3991/2016 and Crl. M.A. No.16695/2016 (Stay)

1. A complaint was filed by the respondent No.1 under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') alleging that the petitioner approached the respondent No.1 and ordered readymade garments which the respondent No.1 supplied as per the requirement from time to time against purchase orders. In respect of the said liability, the petitioner issued two cheques amounting to ₹3,43,396/- and ₹50,000/- respectively in the month of January, 2016 in full and final discharge of the legal liability. However, the two cheques were dishonoured with the remarks "payment stopped by drawer" vide return memo dated 19th January, 2016. Despite issuance of legal notice which was duly served, the money had not been

CRL.M.C. 3991/2016

Page 1 of 3

paid, hence the complaint.

2. Argument of learned counsel for the petitioner is that after filing of the complaint, the petitioner filed a complaint under Section 200 Cr.P.C. read with Section 156 (3) Cr.P.C. before the Court of learned Metropolitan Magistrate, R.R. District Courts wherein pursuant to the directions of the learned Metropolitan Magistrate Crime No.262/2016 under Sections 406/420 IPC was registered at PS Chaitanyapuri District Cyberabad.

3. Learned counsel contends that since for the same allegations FIR has been registered under Section 210 Cr.P.C., the complaint under Section 138 NI Act is required to be stayed/ quashed including the order summoning the petitioner.

4. The complaint of the petitioner on which FIR as noted above was registered notes that complaint under Section 138 NI Act had already been filed against the petitioner. In the complaint, the petitioner had alleged that four blank signed cheques were handed over to the respondent No.1 to start the business and he had assured the petitioner that he would not misuse the said four blank signed cheques however, the same were misused. As despite discharge of the liability, the respondent No.1 failed to return the four cheques to him, he issued instructions to stop the payment.

5. The pendency of investigation in FIR No.262/2016 registered at District Cyberabad, PS Chaitanyapuri does not affect the proceedings in the complaint filed by respondent No.1 under the NI Act for the reason the FIR of the petitioner could at best be a defence for the petitioner in the complaint filed by the respondent No.1 under the NI Act. A perusal of Section 210 Cr.P.C. itself reveals that in a case instituted otherwise than on a

police report, if it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject matter of the inquiry or trial held by him, the Court would call for a report on the matter from the police officer conducting the investigation.

6. In the present case FIR was got registered after institution of the complaint case under Section 138 NI Act and by lodging the FIR the petitioner cannot seek stay of an already pending trial against him under Section 138 NI Act on the plea that the Court should now await the investigation to be conducted by the police officer.

7. I find no merit in the present petition. Petition and application are dismissed.

MUKTA GUPTA, J.

OCTOBER 25, 2016
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