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

% ***Date of Decision: 25th September, 2017***

\+ CRL.M.C. 1681/2015

HONEY BHAGAT ..... Petitioner

Through: Mr.Amit Bhagat, Advocate.

versus

PRALEEN CHOPRA ..... Respondent

Through: Mr.Jitender Vohra and Mr.N.K. Vohra, Advocates.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. Instant petition preferred by the petitioner under Section 482 Cr.P.C. is arising out of the summoning order dated 16.12.2014 passed by the learned Metropolitan Magistrate-01 (NI Act)/West, Tis Hazari Courts, Delhi in C.C. No. 2807/1/2014, for quashing the summoning order dated 16.12.2014, the criminal complaint CC. No. 2807/1/14 and all the consequential proceedings pending thereof before the Court of the learned MM-01 (NI Act)/West Delhi.

2. The brief facts stated are that the Second Party, i.e. Mrs. Honey Bhagat/petitioner herein along with her husband Mr. Rohit Bhagat and M/s R.V. Ganga Enterprises, purchased a property forming right hand side portion of the Third Floor of

the property bearing No. 47, North Avenue Road, West Punjabi Bagh, New Delhi admeasuring 1365 square yards, from the First Party/vendors, i.e. Mrs. Savita Bhatia, Mr. Rajeev Narula, Mr. Rakesh Narula, Mr. Hitesh Narula, represented by their General Attorney- Shri Praleen Chopra/respondent herein.

3. The petitioner also entered into a Memorandum of Understanding(MOU) dated 01.11.2013 with the vendors, represented by the respondent as their Attorney and by virtue of the said MOU the vendors agreed to sell the right hand side portion of the Third Floor of the property bearing No. 47, North Avenue Road, West Punjabi Bagh, New Delhi admeasuring 1365 square yards, for a total sale consideration of Rs. 7,31,00,000/-(Rupees seven crores thirty one lacs only). Out of the aforesaid total sale consideration the Second Party paid a sum of Rs. 4,50,00,000/-(Rupees four crores fifty lacs only) and thereafter the First Party executed the sale deed in respect of the aforesaid property in favour of the Second Party.

4. The remaining payment of Rs. 2,81,00,000/-(Rupees two crores eighty one lacs only) was to be paid by the Second Party to the First Party within two months from the date of the MOU dated 01.11.2013. Accordingly, the petitioner handed over two cheques bearing Nos. 053369 & 053365 both drawn on Union Bank of India, Punjabi Bagh, New Delhi for a sum of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only) and Rs. 1,50,00,000/-(Rupees one crores fifty lacs only) respectively to the the respondent herein.

5. Thereafter, on 26.04.2014 the respondent/complainant filed a complaint, i.e. CC. No. 2807/1, qua against the petitioner before the Court of learned CMM, (Central), Tis Hazari Courts, New Delhi for the offence committed under Sections 138 of the Negotiable Instruments Act, 1881 on dishonouring of a cheque , i.e. cheque no. 053369 of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only), drawn on Union Bank of India, Punjabi Bagh, New Delhi- 110026.

6. It is alleged in the complaint filed by the respondent/complainant that the petitioner towards the discharge of part of the admitted legal liability had issued the cheque in favour of the respondent/complainant and when the respondent/complainant presented the aforesaid cheque with its banker namely Punjab National Bank, Vasant Vihar, New Delhi for its encashment the cheque was returned unpaid/dishonoured vide return memo dated 16.02.2014 with the remarks "Funds Insufficient".

7. Consequently, the respondent/complainant issued legal demand notice dated 13.03.2014 which was duly served upon the petitioner on 21.03.2014. The petitioner replied to the said legal demand notice vide reply dated 06.05.2014. However, when the petitioner failed to make the payment despite expiry of 15 days notice period, the respondent/complainant was constrained to file a complaint under Section 138 read with Section 142 of the NI Act in the Court of Chief Metropolitan Magistrate, Patiala House Courts, New Delhi. However, the said

complaint was returned to the respondent/complainant due to lack of jurisdiction and vide order dated 18.11.2014 the learned MM-06, Patiala House Courts, New Delhi directed filing of the said complaint in the court having territorial jurisdiction in compliance of the directions of the Hon'ble Supreme Court in the judgment titled ***Dashrath Rupsingh Rathod vs. State of Maharashtra & Anr.; MANU/SC/0655/2014***.

8. Thereafter, the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 in the Court of the learned Chief Metropolitan Magistrate, (Central) Tis Hazari Courts, New Delhi.

9. Consequently, vide impugned summoning orders dated 16.12.2014 the learned MM-01 (NI Act)/West Delhi summoned the petitioner/accused for the offence punishable under Section 138 of NI Act.

Hence, the present petition.

10. The learned counsel for the petitioner has submitted that the two cheques bearing Nos. 053369 & 053365 both drawn on Union Bank of India, Punjabi Bagh, New Delhi for a sum of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only) and Rs. 1,50,00,000/-(Rupees one crores fifty lacs only) respectively were handed over to the vendors and the respondent herein solely for security purposes and the respondent without any authorization from the petitioner presented the cheque bearing No. 053369 for encashment.

11. The learned counsel for the petitioner has further submitted that even though as per the terms of the MOU dated 01.11.2013 the said cheques were only security cheques, which were not issued in lieu of any existing legal liability as at the time of issuance of the cheques there was no existing liability or debt on the part of the petitioner. Therefore, the summoning order dated 16.12.2014 is bad in law and fact and is liable to be quashed by this Court under Section 482 Cr.P.C.

12. In support of his contentions the learned counsel for the petitioner has relied on the following judgments:-

a) ***State of Orissa vs. Debendra Nath Padhi; (2005) 1 SCC 568***.

b) ***Madan Singh & Anr. vs. Vee Pee International Pvt. Ltd. & Ors.; 2013 (1) JCC (NI) 91***.

c) ***Bishanswarup Ram Krishan and Ors. and Mahesh Agro P. Ltd. and Ors. vs. STC of India Ltd.; (2009) ILR 5 Delhi 205***.

d) ***Collage Culture and Ors. vs. Apparel Export Promotion Council; 2007 (99) DRJ 251***.

13. On the contrary the learned counsel for the respondent has submitted that the present petition filed by the petitioner is a gross misuse and abuse of process of law as the grounds taken by the petitioner are factual defences, correctness of which are to be proved during the course of trial upon taking notice under Section 251 Cr.P.C. whereas, the petitioner straightaway has approached this Court for quashing of the summoning order.

14. The learned counsel for the respondent has further submitted that as per the MOU dated 01.11.2013 the petitioner herself admits that qua the existing liability she has executed the promissory note and a promissory note can only be executed only when there is an existing and subsisting liability. Furthermore, there is an unequivocal and unambiguous promise of the petitioner in the very same MOU that the petitioner shall clear of the existing liability within two months, i.e. by 31.12.2013, and it was only when the petitioner failed to clear the said subsisting and existing liability till 31.12.2012 that on 12.02.2014 the respondent presented the cheque for encashment which got dishonoured vide return memo dated 16.02.2014.

15. The learned counsel for the respondent has submitted that the contention of the learned counsel for the petitioner that the cheques (including the present cheque) were given as security is also not a valid ground in light of the judgment of the Hon'ble Supreme Court in ***ICDS Ltd. vs. Beena Shabeer and Another; (2002) 6 SCC 426***.

16. The learned counsel for the respondent has further submitted that learned Trial Court has rightly summoned the petitioner and the present petition is not maintainable while relying on the following judgments:-

i. ***HMT Watches Ltd. vs. M.A. Abida & Anr; (2015) 11 SCC 776***.

ii. ***Four Seasons Energy Venture Pvt. Ltd. & Ors vs. State of NCT of Delhi & Anr; MANU/DE/2934/2012***.

iii. ***Rajesh Agarwal vs. State & Anr; MANU/DE/1838/2010***.

17. The instant petition is arising out of the summoning order dated 16.12.2014 passed in the complaint case C.C. No. 2807/1/14 wherein the petitioner is claiming that the impugned summoning order is bad in law and the complaint is nothing but abuse of process of law.

18. The proceedings under Section 138 read with Section 142 NI Act are undoubtedly criminal proceeding which the respondent/complainant is initiating qua against the present petitioner for the wrongful act on the part of the petitioner. The standard of proof in the criminal proceeding is higher than that of a civil proceeding which thus gives the platform to the respondent/complainant to run criminal as well as civil proceedings parallely. This Court has already said so in the case ***Sanjay Aggarwal vs. G.S. Tayal & Ors.; Crl. M.C. No. 4144/2009*** decided on 11.04.2012 and reliance is also placed on the judgment of the Apex court in the case ***Sh. Vishnu Dutt Sharma vs. Smt. Daya Sapra, (2009) 13 SCC 729***.

19. Section 138 of the Negotiable Instruments, Act 1881 is reproduce as under:-

> *"**138. Dishonour of cheque for insufficiency, etc., of funds in the account**. —Where any cheque*

drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

20. The Hon'ble Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd. And Others; (2000) 2 SCC 745*** has laid down the following ingredients for taking cognizance under Section 138 of the NI Act:-

> *" (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
>
> *(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn of within the period of its validity whichever is earlier;*
>
> *(iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*
>
> *(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*
>
> *(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;"*

21. In the instant case the respondent/complainant has filed complaint case for the offence committed under Section 138 NI

Act and the learned Metropolitan Magistrate relying upon the complaint which was supported with affidavit, documents placed on record took cognizance under Section 138 NI Act and passed the impugned summoning orders dated 16.12.2014.

22. The contention of the learned senior counsel for the petitioner that by putting the date on the said cheque without obtaining authority from the petitioner amounts to tampering, does not seems to be correct as in the instant case factum of the two post-dated cheques bearing Nos. 053369 & 053365 both drawn on Union Bank of India, Punjabi Bagh, New Delhi for a sum of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only) and Rs. 1,50,00,000/-(Rupees one crores fifty lacs only) respectively were issued by the petitioner in favour of the respondent/complainant in terms of the MOU dated 01.11.2013 against the balance payment of Rs. 2,81,00,000/- (Rupees two crores eighty one lacs only).

23. In the instant case issuance of the cheques [including the present cheque No. 053369 of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only)] is not disputed by the petitioner. There is no dispute that the cheque in question belongs to the petitioner.

24. Section 20 of the Negotiable Instruments Act, 1881 is reproduced as under:-

> *" **20. Inchoate stamped instruments**.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India],*

and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

25. Bare perusal of Section 20 NI Act shows that there is a presumption that a person signing on the cheque (inchoate stamped instrument) shall be responsible for its encashment on presentation and such person thereby gives prima facie authority to the holder thereof to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. The reliance is placed on the judgment of the this Court in the case ***Ravi Chopra vs. State and Anr.; 2008 (102) DRJ 147***.

26. So far the issuance of the notice dated 13.03.2014 under Section 138 NI Act by the respondent qua against the petitioner is concerned the same is not been disputed by the petitioner as the same has been replied by the petitioner vide reply dated 06.05.2014.

27. In the instant case:-

(i) the petitioner had issued two post-dated cheques, i.e., bearing Nos. 053369 & 053365 both drawn on Union Bank of India, Punjabi Bagh, New Delhi for a sum of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only) and Rs. 1,50,00,000/-(Rupees one crores fifty lacs only) respectively, in favour of the respondent/complainant against the balance payment of payment of Rs. 2,81,00,000/- (Rupees two crores eighty one lacs only);

(ii) one of the aforesaid post-dated cheques was presented for encashment on 12.02.2014 which is within a period of six months from the date on which it was drawn or within the period of its validity whichever is earlier;

(iii) the said cheque was returned dishonoured vide dishonour memo dated 16.02.2014 with the remarks "Funds Insufficient", i.e. in cheque no. 053369 of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only);

(iv) the respondent/complainant had sent legal notice dated 13.03.2014 to the petitioner upon dishonouring of the aforesaid cheque which is within 15 days of the receipt of information by respondent/complainant from the bank regarding the return of the cheque as unpaid;

(v) the petitioner failed to make payment of the said amount to the respondent/complainant (the holder in due course of the cheque) within 15 days of the receipt of the said notice dated 13.03.2014.

28. On bare perusal of the abovementioned facts it is crystal clear that there was an existing liability qua against the petitioner under Section 138 of NI Act and the Apex Court in the case ***Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd. And Others; (2000) 2 SCC 745*** has specifically stated that if the ingredients are satisfied by the complainant then the summoning order is not bad and the relevant para is reproduced as under:-

> *"11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability."*

29. Admittedly, the cheque, i.e., cheque no. 053369 of Rs. 1,31,00,000/-(Rupees one crores thirty one lacs only), was issued by the petitioner in favour of the respondent/complainant in terms of the MOU dated 01.11.2013 which was for the purpose of making balance payment which amounts to existing liability qua the petitioner. The relevant part of the MOU dated 01.11.2013 is reproduced as under:-

> *"That the payment of Rs. 2,81,00,000/- (Rupees two crores eighty one lacs only) shall be paid by the second party to the first party within two months from the date of*

this Memorandum of Understanding. As security the second party has issued post-dated cheques for the balance amount to Rs. 2,81,00,000/- (Rupees two crores eighty one lacs only) to the first party, which shall be enchashed by the first party on due dates. And has also issued promissory note of the sum of Rs. 2,81,00,000/- (Rupees two crores eighty one lacs only). The details of post-dated cheques are as follows:

(i) Rs. 1,50,000,00/- (Ropees One Crore Fifty Lacs only) vide Cheque No. 053365, dated 15.12.2013, drawn on Union Bank of India, Punjabi Bhag Branch, New Delhi-110026.

(ii) Rs. 1,31,00,000/- (Ropees One Crore Thirty One Lacs only) vide Cheque No. 053369, dated 15.12.2013, drawn on Union Bank of India, Punjabi Bhag Branch, New Delhi-110026.

That on clearance of balance payment of Rs. 2,81,00,000/- (Rupees two crores eighty one lacs only) the first party shall hand over the vacant and physical possession of the said Right hand side portion of Third Floor alongwith Right hand side portion of Terrace over & above the third floor of the said property to the second party. And also Sale Deed shall be signed and executed in favour of the second party in respect of the Right hand side portion of Terrace over & above the third floor of the siad property, alongwith 1 Car parking."

(emphasis supplied)

30. Therefore, I find no merit in the contentions of the learned counsel for the petitioner and the judgments relied by him are not helpful in view of the facts and circumstances of the case and the judgments; *Kusum Ingots & Alloys Ltd.* (supra) and *Ravi Chopra* (supra).

31. Consequently, the present petition is dismissed having no merit. One copy of this judgment be sent to the concerned Court. No order as to costs.

32. All the pending applications (if any) are also disposed of.

I.S.MEHTA, J

SEPTEMBER 25, 2017/*sr*