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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 24th July, 2018

+ CRL.M.C. 2699/2016 & CrI.M.A. 11579/2016

PURNANGINI TREHAN

..... Petitioner

Through: Mr. Rajesh Chugh, Mr. Amit &
Mr. Pankaj Pareek, Advs.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Akshai Malik, APP for the
State.

Mr. V.S. Panwar & Mr. Vikas
Walia, Advs. for R-2.

+ CRL.M.C. 2729/2016 & CrI.M.A. 11672/2016

VIRENDER MOHAN TREHAN

..... Petitioner

Through: Mr. Rajesh Chugh, Mr. Amit &
Mr. Pankaj Pareek, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Akshai Malik, APP for the
State.

Mr. V.S. Panwar & Mr. Vikas
Walia, Advs. for R-2.

+ CRL.M.C. 2730/2016 & CrI.M.A. 11674/2016

VIRENDER MOHAN TERHAN

..... Petitioner

Through: Mr. Rajesh Chugh, Mr. Amit &
Mr. Pankaj Pareek, Advs.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Akshai Malik, APP for the State.

Mr. V.S. Panwar & Mr. Vikas Walia, Advs. for R-2.

+ CRL.M.C. 2731/2016 & Crl.M.A. 11676/2016

PURNANGINI TREHAN Petitioner

Through: Mr. Rajesh Chugh, Mr. Amit & Mr. Pankaj Pareek, Advs.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Akshai Malik, APP for the State.

Mr. V.S. Panwar & Mr. Vikas Walia, Advs. for R-2.

+ CRL.M.C. 3629/2016 & Crl.M.A. 15301/2016

PURANANGINI TREHAN Petitioner

Through: Mr. Rajesh Chugh, Mr. Amit & Mr. Pankaj Pareek, Advs.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Akshai Malik, APP for the State.

Mr. V.S. Panwar & Mr. Vikas Walia, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The five petitions at hand have been presented invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) to pray for quashing of the summoning orders passed by the Metropolitan Magistrate in criminal complaint nos. 118/2016, 114/2016, 74/2016, 75/2016, 83/2016 on 11.01.2016, 11.01.2016, 06.01.2016, 06.01.2016, 09.05.2016 respectively, each instituted by the second respondent, alleging offences under Section 138 of Negotiable Instruments Act, 1881, respecting five different cheques statedly drawn and issued by the petitioners to discharge their liability towards the second respondent (complainant) which, upon presentation, were returned unpaid, the petitioners inspite of being served with the notices of demand in the wake of such return of cheques, having failed to make the payment. The petitioners point out that the cheques in question were never issued in favour of the second respondent.

2. A perusal of the five complaint cases from which these petitions arise would show that the second respondent (complainant) has alleged that it is a reputed finance company and had extended certain loan to Paras Equipment and Engineering Ltd. by executing a loan agreement, bearing no. U10095, the petitioners herein having stood guarantee for its repayment. Alleging default in repayment of the loan, the complainant has averred that the petitioners in discharge of their liability had issued the cheques in question in its favour, they bearing numbers 037960 dated 28.10.2015 for Rs. 47,89,643/-; 139039 dated 28.10.2015, for Rs. 49,97,467/-; 139041 dated 28.10.2015 for 45,45,893/-; 037961 dated 28.10.2015 for Rs.

45,45,893/- and 037959 dated 29.10.2015 for Rs. 49,97,467/- against their account with State Bank of Patiala but when the said cheques were presented, they were returned unpaid.

3. The learned counsel for the petitioners has pointed out that the cheques on the basis of which the complaint cases have been filed were issued in the name of Unitel Credit Pvt. Ltd. and not in favour of the second respondent. This fact is conceded by the counsel for the second respondent and is also confirmed by copies of the said cheques which are filed with these petitions.

4. The explanation of the second respondent, however, is that Unitel Credit Pvt. Ltd. which was the lender for purposes of transactions from which these complaints arise had merged with the complainant company as per the scheme of amalgamation which was approved by this Court in company petition no. 320/2010 by order dated 20.01.2011. It is stated that the cheques in question thus issued pursuant to the loan transaction entered into, prior to the filing of these complaint cases, represented debt owed to it (complainant company) and legitimately claimed by it.

5. But then, he also fairly conceded that the above facts do not form part of the averments in the criminal complaint cases. There is, in the above fact no explanation in any of the five complaint cases as to by what authority the cheques had been presented for encashment by the second respondent (the complainant) even though they had been issued in favour of another entity. Similar is the deficiency in the notices of demand and the evidence adduced at the pre-summoning inquiry in each case.

6. In the above facts and circumstances, there being no case made out of the cheques representing “debt or other liability” due to the complainant by the petitioners, the complaint cases alleging offences under Section 138 of Negotiable Instruments Act, 1881 on the basis of afore-mentioned cheques cannot be maintained by the second respondent.

7. The continuation of the above-said proceedings would be an abuse of the process of law. Hence, the petitions are allowed. The impugned orders are set aside. The proceedings in above-mentioned criminal complaint cases against the petitioners are quashed.

R.K.GAUBA, J.

JULY24, 2018

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