

\$~14

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th September, 2018

+ CRL. M.C. 3128/2016 & CrI.M.A. 13428/2016

BALJIT SINGH REDHU & ANR. Petitioners

Through: Mr. Surender Singh, Adv.

versus

NCT OF DELHI & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for
the State.

Ms. Sunakshi Gupta, Adv. for
R-2 along with POA holder
Mr. Sunil Aggarwal of R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed seeking quashing of the proceedings arising out of criminal complaint case (no. 113/1/2016) alleging offence under Section 138 of Negotiable Instruments Act, 1881 which was concededly presented by the second respondent (the complainant) on 06.01.2016. A perusal of the criminal complaint, copy whereof has been submitted, would show that it is based on fact of no payment having been made inspite of notice of demand issued

on 17.12.2015 in the wake of dishonour of cheque bearing no. 002460 dated 19.11.2015 for Rupees Three lakhs drawn on Dena Bank, Jind Branch, in favour of the second respondent (complainant), the said cheque having statedly been issued by the petitioner (the accused) on account of liability due. It is clear from the averments in the criminal complaint and the copy of demand notice dated 17.12.2015, as indeed the counter affidavit of the second respondent that parties had been involved in some commercial transactions, the claim for amount by the complainant having arisen therefrom.

2. It has been brought out in the counter affidavit of the complaint, as is also conceded by the petitioner (accused) that aside from the said cheque bearing no. 002460, there were certain other cheques which had been issued by the accused in favour of the complainant, such other cheques including cheque bearing nos. 002461 and 002462 each of Rupees Three lakhs. Going by the averments in the counter affidavit, the other two cheques i.e. bearing nos. 002461 and 002462 were presented on or about 14.12.2015 and were also dishonoured similar to the dishonor of the cheque bearing no. 002460, on which account the present proceedings were initiated founded on the demand notice dated 17.12.2015. Crucially, in the demand notice dated 17.12.2015, there is no reference made to the other cheques which were presented on or about 14.12.2015 and were similarly dishonoured. The complaint is also conspicuously silent in this regard.

3. The petitioner has shown copy of his reply dated 03.01.2016 sent in reply to the demand notice, *inter alia*, stating that, upon receipt

of the demand notice dated 17.12.2015, he had transferred an amount of Rupees Three lakhs, it being the value of the cheque in question in the account of the complainant by NEFT No. P15122906117893 on 29.12.2015 within fifteen days of the receipt of notice. In the complaint which was presented on 06.01.2016, there is no reference to such amount having been received by bank transfer.

4. In the counter affidavit, however, mercifully, the complainant does acknowledge receipt of Rupees three lakhs by NEFT transfer on 29.12.2015 though taking the position that the said amount received had been “*adjusted*” against the claim arising out of dishonor of the two other cheques bearing nos. 002461 and 002462 respectively. Since the transfer of the money through banking channel (NEFT) on 29.12.2015 was with a specific reference to the cheque bearing no. 002460, it could not have been the choice or prerogative of the complainant (the payee) to appropriate the same against the liability of the accused arising out of dishonor of other two cheques, particularly when he was conspicuously silent, in regard to such other liabilities, in the demand notice dated 17.12.2015, even though to its knowledge, the said other cheques had also since been presented, on or about 14.12.2015, and were meeting the same fate as the other cheque.

5. The crucial fact of payment of value of the cheque within the stipulated period was clearly concealed from the criminal court in the criminal complaint on which process was issued. The said payment, in fact, renders the complaint not founded on true facts. The payment having been made pursuant to the notice of demand, no offence could stand constituted.

6. The petition is thus, allowed. The proceedings in the criminal case arising out of criminal complaint referred to above are hereby quashed.

R.K.GAUBA, J.

SEPTEMBER 12, 2018

nk

