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

Reserved on: 10th July, 2018
Pronounced on: 23rd July, 2018

\+ CRL.M.C. 3087/2015 and Crl. M.A. 11007/2015

VIJAY AHUJA ..... Petitioner
Through: Mr. Sanjeev Agarwal, Adv.

versus

STATE OF NCT OF DELHI & ANR ..... Respondents
Through: Mr. Mukesh Kumar, APP for the State.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

O R D E R

1. The petitioner is facing criminal prosecution on the accusations of he having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on the basis of criminal complaint case no.11086/2014 initiated by the second respondent (complainant) in the court of the Metropolitan Magistrate, Delhi, he having been summoned, after preliminary inquiry, by order dated 09.02.2015. The accusations relate to non-payment of the value of the cheque no.484425 for Rs.20,00,000/- statedly drawn by the petitioner against his account with ICICI Bank Ltd., Delhi in favour of the complainant which, upon presentation, was returned unpaid by the bank. The petitioner failed to make any payment inspite of service of notice of demand.

2. The petitioner invokes the jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 to pray for quashing of the said criminal complaint case on the ground it is an abuse of the process of the court.

3. The background facts leading to the filing of the complaint case are set out in the complaint by the second respondent as under :

> *"3. The complainant submits that the complainant was owner of* property *namely Shop No.2, Municipal Corporation No.1723/ to 1727 situated at Ramgali Bhagirath Palace, Chandni Chowk, Delhi-110 006 and the same was sold to one Sandip Kumar Manocha and Tanshul Manocha who is relative of the accused for Rs.26,00,000/- and the amount was shown as Rs.650,000/- in the sale deed. And since the above said purchaser was a relative of the accused therefore, it was stated by the accused that balance amount of the aforesaid property i.e. Rs.twenty lakhs will be paid by the accused therefore, on account of the aforesaid legal dues the accused has issued undated signed cheque for an amount of Rs.20,00,000/- in favour of complainant bearing number No.484425 drawn on ICICI Bank. The accused is witness to the sale deed. The power of attorney being son of complainant is aware about the transaction and was present when sale deed was executed and the cheque was given. After the aforesaid execution of the sale deed on 17.02.2011 the property was handed over to the purchaser and still the payment was not made and the complainant has waited for the period of two years and as payment is not made therefore, ultimately the complainant deposited the said cheque on 30.07.2013. A copy of the sale deed is annexed herewith.*
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> *4. The complainant submits that the aforesaid cheque bearing No.484425 was deposited by the complainant*

on 30.07.2013 in the bank viz. ICICI Bank Ltd., Delhi branch but the aforesaid cheque has been returned unpaid with endorsement payment stopped by drawer by banker and the same has been intimated to complainant by their banker that is ICICI Bank, Bopal Branch, Ahmedabad on 11.08.2013. A copy of cheque and return memo are annexed herewith a separate list."

4. It is the argument of the petitioner that the complainant had filled in the date in the cheque which was admittedly issued as "undated" and therefore, it is a case of material alteration of the negotiable instrument, rendering it invalid. Reliance is placed on *Jayantilal Goel Vs. Zubeda Khanum, AIR 1986 AP 120, Ramakannan vs. Chettiar & Co., (2007) 1 LW (Cri) 527 and BPDL Investment Vs. Maple Leaf Trading, 129 (2006) DLT 94*. It is also the submission of the petitioner that the cheque in question was issued as "security" and, therefore, it did not represent a cheque handed over for discharge of legally enforceable debt and consequently the criminal prosecution under Section 138 of the Negotiable Instruments Act cannot be launched on such basis. Reliance is placed on *M.S. Narayan Menon Vs. State of Kerala and Anr., (2006) 6 SCC 39 and Prajan Kumar Jain Vs. Ravi Malhotra, 1 (2010) BC 8.*

5. The second above-noted submission cannot be accepted, without evidence being led in support in as much as the averments in the complaint that the petitioner had undertaken the liability to pay has been supported by evidence adduced during pre-summoning inquiry on basis of which the impugned order has been passed, it being the burden of the petitioner to refute such facts at the trial.

6. The first above-said submission is also found to be without merit. The three judgments cited, they having been rendered by learned single Judges of the High Courts of Andhra Pradesh, Madras and of this court are apparently *per incuriam* in as much as they do not seem to take into account the provision contained in Section 20 of the Negotiable Instruments Act, 1881, which reads thus :-

> *"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 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.*

7. In *T. Nagappa Vs. Y.R. Muralidhar, (2008) 5 SCC 633,* in the context of similar prosecution under Section 138 of the N.I. Act, 1881, the Supreme Court observed that by reason of the provision contained in Section 20, a right is created in the holder of the cheque though subject to conditions mentioned therein, it indicating the grant of a "*prima facie authority*" to complete an incomplete negotiable instrument.

8. The fact that the petitioner had handed over an undated cheque, in the given facts and circumstances would ordinarily lead to presumption of grant of authority to the payee i.e. the complainant to fill in the date. The assertion of the petitioner that there was no such authority gives rise to a question of fact which cannot be answered without both parties being called upon to adduce evidence.

9. Similar contentions raised in *Vijender Singh Vs. M/s. Eicher Motors Limited and Anr., 2011 SCC Online Del 2095,* again in the backdrop of a prosecution under Section 138 of the Negotiable Instruments Act, 1881 and in *Puneet Kumar Agarwal Vs. M/s. Imaginations Agri Exports & Ors., 2013 SCC Online Del 701,* in the context of a summary suit under Section 37 of the Code of Civil Procedure, 1908 were rejected by learned single judge of this court, the latter decision being based, *inter alia*, on the provision contained in Section 20 quoted above and the view taken in *T. Nagappa* (supra).

10. For the foregoing reasons, the petition and the application filed therewith are dismissed.

(R.K. GAUBA)
JUDGE

JULY 23, 2018
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