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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 7th August, 2018

+ CRL.M.C. 3343/2015 and Crl.M.A.11946/2015

RAJENDRA MISHRA

..... Petitioner

Through: Mr. Satish Tamta, Senior Advocate
with Mr. Udayan Khandelwal,
Advocate

versus

PRAMOD NISCHAL

..... Respondent

Through: Mr. Arun Nischal, AR for the
Respondent

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner stands summoned as an accused before the court of Metropolitan Magistrate in terms of order dated 18.04.2015 passed on the criminal complaint dated 15.04.2015 of the respondent (the complainant) alleging offence under Section 138 of the Negotiable Instruments Act, 1881 in relation to a cheque No.347241 dated 20.02.2015 for Rs.30,000/- drawn against his account with Axis Bank Limited, Vasant Kunj, new Delhi-110 070. He has approached this court by the petition at hand invoking Article 227 of the Constitution of India and the inherent power under Section 482 of the Code of Criminal Procedure, 1973 to seek quashing of the said proceedings,

contending that no case for such criminal action on the basis of averments in the criminal complaint was made out and, consequently, the summoning order is in the nature of abuse of the process of law.

2. The respondent is represented by her son (the attorney) in these proceedings.

3. Both sides have been heard and the record has been perused.

4. Going by the averments in the criminal complaint, it appears that sons of the complainant, namely, Ashish Nischal and Arun Nischal (the second said son being the attorney, present before the court) are advocates practicing in the Courts and Tribunals in Delhi. It appears that the petitioner had engaged the said sons of the complainant for representing him in some litigation before Central Administrative Tribunal (Principal Bench) at New Delhi and, in that context, professional fees of Rs.50,000/- was settled to be paid by him to the said sons (his advocates). Against the said arrangement, Rs.20,000/- stood paid on 25.04.2015, the balance Rs.30,000/- having been agreed to be paid before the date of hearing next fixed before the tribunal.

5. It is alleged in the complaint that on 10.02.2015, the petitioner handed over afore mentioned cheque (post dated cheque) and upon the “son of the complainant” asking him to fill it in the name of his mother, *i.e.*, the complainant, the cheque was accordingly issued in the name of the mother, *i.e.*, the complainant. The cheque, on being presented at the bank, was returned unpaid with reasons “*payment*

stopped by drawer”. A legal notice demanding the payment of money followed, but no payment having been made, the criminal complaint was filed.

6. Undoubtedly, the statutory provision contained in Section 139 of the Negotiable Instruments Act, 1881 gives rise to a presumption, “*unless contrary is proved*” that the holder of the cheque had received the cheque of the nature mentioned in Section 138 “*for the discharge, in whole or in part, of any debt or other liability*”. It has to be borne in mind that in order to maintain and bring home a case for offence under Section 138 of the Negotiable Instruments Act, 1881, aside from proving other facts like failure of the cheque upon presentation and default in payment despite demand notice, it is the onus of the complainant to also prove that the cheque was issued “*for the discharge, in whole or in part, of any debt or other liability*”.

7. Ordinarily, the opportunity to rebut the presumption raised by Section 139 of the N.I. Act would be exercised and availed of by the accused at the trial by attempting to discredit the evidence of the complainant or by leading some positive evidence in rebuttal. In the present case, however, even going by the averments in the criminal complaint, it is clear from the word go that there was no liability due to the complainant from the petitioner, *i.e.*, the person who has been summoned as an accused. The complainant had no arrangement with the petitioner. She had not rendered any service to him. It is her sons who were engaged by him and the payment was due on account of professional services rendered by them to the petitioner. The

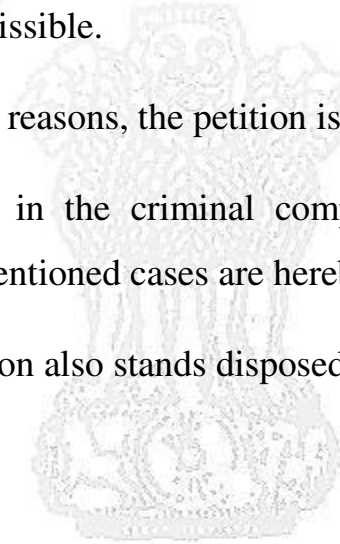
judgment of the Supreme Court dated 19.03.2015 rendered in “*HMT Watches Ltd. vs. M.A. Abida & Anr., Criminal Appeal No.471/2015*”, is distinguishable since the present one is not a case which is dependent upon “*factual defences*” which are “*disputed*”.

8. In these circumstances, the issuance of the cheque in the name of the mother itself is questionable. Be that as it may, since the case presented by the complainant itself shows there being no debt or other liability, the prosecution on the criminal complaint aforesaid against the petitioner is impermissible.

9. For the foregoing reasons, the petition is allowed.

10. The proceedings in the criminal complaint case against the petitioner in the aforementioned cases are hereby quashed.

11. Pending application also stands disposed of.



R.K.GAUBA, J.

AUGUTST 07, 2018

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