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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5019/2017**

SATISH NAGAR Petitioner
Through: Mr. Siddharth Handa, Advocate.

versus

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

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **19.09.2018**

1. Matter has been passed over once. Even on second call, no one appears for the respondent No.2.
2. Arguments heard and material placed on record has been perused.
3. By this petition, under Section 482 Cr.P.C. petitioner has prayed for quashing of summoning order dated 28.07.2016 and further proceedings of the Complaint Case No. 471163/2016 titled M/s D.B. Traders Vs. Rajeev Chauhan & Anr. pending in the Court of Ld. M.M. District South, Saket Courts, New Delhi under section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') against him.
4. In said complaint case, petitioner has been impleaded as accused No.2; whereas Mr. Rajeev Chauhan has been impleaded as accused No. 1. Respondent No. 2 has alleged in the complaint that Mr. Rajiv Chauhan

and petitioner were close friends. Petitioner was proprietor of M/s Parthivi Singh Enterprises, Nehru Apartment, B-27, 3rd Floor, Basant Cinema, Ghaziabad. He purchased building material from the respondent no.2. However, in order to clear the partial liability of material supplied to the petitioner, Shri Rajeev Chauhan (accused no. 1), issued cheque No. 743573 dated 04.01.2005 for ₹3,00,000/- drawn on Indusland Bank, Chhapraula Branch, District Gautambudh Nagar, U.P. The cheque was signed by Mr. Rajeev Chauhan with the assurance that on presentation, the same would be cleared. However, on presentation, the said cheque was returned dishonoured on 07.01.2015 with the remarks 'insufficient funds'. Despite service of legal notice dated 05.02.2015, sent by the respondent no. 2 through his lawyer to the accused persons, the amount was not paid.

5. Learned counsel for the petitioner submits that, as per the averments made in the complaint itself, petitioner is not the drawer of cheque in question. Mr. Rajeev Chauhan is the drawer of cheque. The cheque was issued by Mr. Rajeev Chauhan from his bank account, inasmuch as, was signed by him. By placing reliance on *Aparna A.Shah Vs. M/S Sheth Developers P. Ltd.& Anr* MANU/SC/0598/2013, it has been contended that petitioner cannot be prosecuted under section 138 of the Act since he is not drawer of the cheque. In the present case, the cheque was issued by Mr. Rajeev Chauhan, inasmuch as the said cheque was signed by him.
6. In my view, petitioner has been wrongly impleaded as accused by the complainant. The cheque has been issued by Mr. Rajeev Chauhan

(accused no.1) from his bank account, inasmuch as, has been signed by him, which is evident from a perusal of the cheque. Thus, petitioner cannot be said to have committed an offence under section 138 of the Act. Respondent No. 2 has alleged in the complaint that cheque in question was issued by accused No.1 (Mr. Rajeev Chauhan).

7. In *Aparna A. Shah (Supra)* in the similar facts, Supreme Court has held that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. Admittedly, the petitioner is not the drawer of the cheque. Thus, I am of the view that petitioner, not being drawer of the cheques, cannot be prosecuted for the offence under Section 138 of the Act.
8. For the foregoing reasons, Complaint Case no. 471163/2016 titled *M/s D.B. Traders Vs. Rajeev Chauhan & Anr.* is quashed qua the petitioner only.
9. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J

SEPTEMBER 19, 2018

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