$~30

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th July, 2018

\+ **CRL.M.C. 4599/2015 and Crl. MA 16461/2015, 16462/2015 and 14794/2017**

L R VISHWANATH ..... Petitioner
Through: Mr. Atul Verma, Advocate

versus

STATE (NCT OF DELHI) & ORS ..... Respondents
Through: Mr. Ravi Nayak, APP with SI Amit Kumar, PS Anand Vihar, Delhi

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

ORDER (ORAL)

1. On the criminal complaint of second respondent, the petitioner was summoned by the Metropolitan Magistrate to face trial for offence under Section 138 of the Negotiable Instruments Act, 1881, the accusations relating to seven cheques issued and allegedly drawn on State Bank of Patiala, Shastri Bhawan, New Delhi by the petitioner, they being cheque nos.760458 dated 27.06.2015 for Rs.2,00,000/-; no.760453 dated 30.06.2015 for Rs.2,00,000/-; no.760459 dated 25.06.2015 for Rs.2,25,000/-, no.760460 dated 01.07.2015 for Rs.2,00,000/-, no.760461 dated 29.06.2015 for Rs.1,21,000/-, no.760462 dated 01.07.2015 for Rs.3,04,000/-; and no.380712 dated 30.06.2015 for Rs.3,00,000/-. The cheques were stated to have been presented for encashment by the second respondent in his account

with Axis Bank Ltd., B-7, Ashoka Niketan, Anand Vihar, New Delhi but were returned unpaid. The second respondent has claimed in the case that he had sent a legal notice of demand on 08.07.2015 to the petitioner inspite of which no payment was made and rather a reply on false and contradictory grounds was sent.

2. The petitioner has challenged the summoning order by the petition at hand invoking the jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 and Article 227 of the Constitution of India, the prayer being for the proceedings in the said criminal complaint case (667/2015) to be quashed.

3. It is the version of the petitioner that he is a high ranking officer of Government of India working in the capacity of Additional Director General under the Ministry of Information and Broadcasting. He claims that he had availed of a loan in the sum of Rs.28,34,238/- from India Bulls Housing Finance Ltd. (third respondent) for raising finance for purchasing a residential property. According to him, M/s. Chanson Motors Pvt. Ltd., a contractor engaged by the Department where he was employed had provided taxi services to him, wherein the second respondent (complainant of the criminal case) was deputed as a driver who would remain at his disposal from 04.06.2014 till May 2015. It is his version that during one journey to his office, on account of telephonic conversation with his wife regarding the intended purchase of a residential property in Delhi, the second respondent had become privy to his effort and had offered help. He states that the house which he intended to purchase and for which finance was raised eventually from the third respondent was one of the several properties

shown to him by the second respondent with the help of a property dealer. It is also his version that on the pretext of his house being under repair at that time, the second respondent was permitted by him (the petitioner) to use the house which was purchased in the name of his wife with the finance raised from the third respondent. But when the petitioner asked for the return of the keys of the house, the second respondent started demanding Rs.15,50,000/- to be paid, claiming it was outstanding towards purchase of the house. It is the version of the petitioner that the cheques on the basis of which the criminal complaint has been lodged had infact been issued by him (the petitioner) to the third respondent as a "security" for the loan transaction but the same had been fraudulently obtained by the second respondent to set up a false case of offence under Section 138 of the N.I. Act.

4. The contentions raised by the petitioner as aforesaid bring out a factual version which is apparently contrary to the version of the second respondent in the criminal complaint. According to the allegations in the said complaint, the petitioner had availed of a private loan from the second respondent and the cheques were infact meant for discharge of the liability arising out of the said loan. The summoning order has been passed by the Metropolitan Magistrate on the basis of evidence led before him that includes the sworn testimony of the second respondent. Questions of fact arise and the forum under Section 482 Cr. PC or, for that matter, the jurisdiction under Article 227 of the Constitution of India is hardly the appropriate forum or jurisdiction to adjudicate upon such questions of fact. The word of the

petitioner as against that of the complainant of the case will have to be tested at the trial, particularly when the petitioner does not dispute that the cheques in question bear his signatures and were drawn against his own bank account.

5. For the foregoing reasons, this court is not inclined to interdict at this stage of the criminal process. The petitioner will have the liberty to raise defence in the above nature during the trial into the complaint case before the Metropolitan Magistrate.

6. The petition for quashing of the criminal proceedings and the applications filed therewith are dismissed.

R.K.GAUBA, J.

JULY 05, 2018
yg