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

+ CRL.M.C. 712/2016

M/S STRATEGIC INFOTECH SYSTEMS (P) LTD. & ANR

..... Petitioners

Through: Mr. Ankur Mahindro, Mr. Jayant
Mohan Verma & Mr. Rohit Batra,
Advts.

versus

ANAND SETHI & ORS

..... Respondents

Through: Father of petitioner no.1 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **27.02.2019**

The first respondent statedly was a partner in M/s Webnet Software and Technology with Mr. Sandeep Bajaj, Director of the petitioner company. The partnership included two others namely Kapil Oberoi and Mr. Dheeraj Oberoi. The first respondent statedly was also a shareholder in the petitioner company along with the others. It appears that the parties fell out with each other against this backdrop. The petitioner was served with demand notice dated 07.03.2003 by the first respondent concerning dishonour of cheque no. 523752 against account of the partnership firm maintained with ICICI Bank, the cheque purportedly having been issued on 27.02.2003 for a sum of Rs. 5 lacs in favour of the first respondent. The petitioner claims to have lodged a request with the concerned bank on

06.03.2003 seeking stopping of the payment against the said cheque along with one another cheque (no. 523751) stating that the said two instruments had been stolen from the office safe. A reply on similar lines was sent to the petitioner on 20.03.2003. The petitioner also claims to have lodged a report with the police on 06.03.2003 stating, *inter alia*, that the said cheques had been stolen and thereby sought suitable action. The said complaint was followed by another complaint dated 24.04.2003

The first respondent later filed a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (NI Act), on the basis of aforementioned cheque and non-payment against the demand notice. The criminal complaint involving the petitioner as accused is pending.

On the other hand, the petitioner approached the court of Metropolitan Magistrate (CC no. 118/1/2013) seeking criminal action against the respondents, *inter, alia*, on the allegations of theft of cheque and also submission of form no. 32 with the Registrar of Companies (ROC) under the forged signatures of Sandeep Bajaj, Director through whom the petitioner company is represented. In the context of the said second allegation, respecting form no. 32, reliance is placed by him on his own evidence about he having seen such form no. 32 on the record of ROC during inspection on 10.03.2003. It is the case of the petitioner that the third respondent had also inspected the record of ROC on 01.04.2003 and that it was later revealed that the part of form no. 32, wherein his forged signatures had been created was torn off and destroyed.

The petitioner led evidence, during pre-summoning inquiry, by examining director Sandeep Bajaj (CW-1) also examining other witnesses

two of them being officials from the office of ROC (CW-2 & CW-3) and the last (CW-4) being the other partner Dheeraj Oberoi. The Metropolitan Magistrate however, found that sufficient evidence had not been adduced, there being no ground to summon the accused persons or proceed with the complaint.

The petitioner challenged the said order of dismissal of his complaint in the court of Sessions by criminal revision no. 08/2014 which was dismissed by order dated 29.06.2015.

The present petition under Section 482 Cr.P.C. was instituted to bring a challenge to the order of the Metropolitan Magistrate.

After some hearing, the learned counsel for the petitioner submitted that, without prejudice to his contentions on both the above counts, the same being subject matter of his defences in the pending criminal case under Section 138, NI Act, he may be permitted to withdraw the present petition, he reserving the right to press these contentions as defence arguments.

The petition is dismissed as withdrawn, the contentions of the petitioner being reserved to be agitated as defence arguments before the concerned criminal court.

Dasti under the signatures of Court Master.

R.K.GAUBA, J

FEBRUARY 27, 2019

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