

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

Date of Order: February 18, 2019

+ **CRL.M.C. 2496/2016 & CRL.M.A. 3584/2019**

+ **CRL.M.C. 2408/2017 & CRL.M.A. 2409/2019**

+ **CRL.M.C. 4115/2017 & CRL.M.A. 16497-16498/2017**

CRL.M.A. 2261/2019

ARUN KUMAR KHOBRAGADE

RAS FROZEN FOODS PVT LTD & ANR

RAS FROZEN FOODS PVT LTD & ORSPetitioners

Through: Mr. Ashish Verma, Advocate

versus

RAHUL DARBARI

.....Respondent

Through: Mr. Ajay B. Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

In the above captioned two petitions, quashing of complaint of 26th September, 2015 under Section 138 of *Negotiable Instruments Act, 1881*, and summoning order of 29th September, 2015 relating to dishonor of cheque of ₹25 lacs is sought on merits, whereas in the above captioned third petition quashing of complaint of 11th December, 2015 relating to dishonor of cheque of ₹25 lacs and summoning order of 25th February, 2016 is also sought on merits.

With the consent of learned counsel for the parties, the above

captioned three petitions have been heard together and are being disposed of by this common order.

Learned counsel for petitioner submits that the cheques in question were given for the purposes of purchase of shares. It is submitted that the shares which were to be purchased never got transferred and it is not the case of complainant that these shares were transferred. Reliance is placed upon Supreme Court's decision in *M/s Indus Airways Pvt. Ltd. & Ors. Vs. M/s. Magnum Aviation Pvt. Ltd. & Anr.* 2014 (4) SCALE 645 to seek quashing of impugned complaint and summoning order.

On the contrary, learned counsel for respondent submits that the summoning of petitioners is justified as the cheque amount was part payment given by respondent-complainant to accused-company. Attention of this Court has been drawn to e-mail of 27th May, 2013 sent by petitioner-Arun regarding loan being classified as unsecured loan of and collateral being treated as secured loans. Attention is also drawn to the audited financial statement of accused-company (*Annexure P-4*) to point out that the cheque amount is reflected in the financial statement of accused as unsecured loan and so, the complaints in question deserve to be proceeded with and so, dismissal of these petitions is sought.

Upon hearing and on perusal of complaints in question, impugned summoning order, material on record and the decision cited, I find that the stand taken by petitioner is refuted by respondent's counsel who submits that the stand taken on behalf of petitioners pertains to the merits of this case, which cannot be pre-judged and is required to be considered after the evidence is recorded by trial court. This court is of the *prima*

facie opinion that the averments made in the complaints in question and the agreement between the parties, justifies summoning of petitioner and no case to quash complaints in question and the summoning order is made out.

Accordingly, these petitions and the applications are disposed of with liberty to petitioners to raise the pleas taken herein, before the trial court at the appropriate stage.

These petitions and the applications are accordingly disposed of while refraining to comment upon the merits of the case.

(SUNIL GAUR)
JUDGE

FEBRUARY 18, 2019

v