

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: April 24, 2019

+ **CRL.M.C. 3663/2017**

JAGDISH CHANDER Petitioner
Through: Mr. Rakesh Taneja, Advocate

Versus

KAPOOR JEWEL MINES PVT LTD Respondent
Through: Mr. Harjinder Singh & Mr.
Ravinder Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Quashing of complaint under Section 138 of Negotiable Instruments Act, 1881 is sought in this petition by recourse to Section 142 (1) (a) of the Negotiable Instruments Act, 1881.

Learned counsel for petitioner submits that two cheques in question were issued in the name of *Raj Pal Kapoor* but the complaint has been filed by *M/S Kapoor Jewel Mines (P) Ltd.* It is submitted on behalf of petitioner that there are averments in the complaint (*Annexure P-1*) that respondent is holder of the cheques in question in due course. So, it is submitted by petitioner's counsel that the complaint (*Annexure P-1*) is defective and on its basis, petitioner cannot be prosecuted.

Attention of this Court is drawn to Section 9 of the Negotiable Instruments Act, 1881 to point out that there are no averments in the

complaint, as to how the respondent becomes holder of the cheques in question in due course.

On the contrary, learned counsel for respondent submits that respondent-complainant has duly authorized *Raj Pal Yadav* vide resolution of 31st December, 2016 to file the complaint in question and the stand taken by petitioner is matter of trial and so, this petition deserves dismissal.

Upon hearing and on perusal of impugned complaint (*Annexure P-1*) and summoning order of 28th February, 2017, I find that respondent-company has duly authorized payee of the cheques in question vide resolution of 31st December, 2017 to file the instant complaint. Complaint under Section 138 of Negotiable Instruments Act, 1881 is maintainable by a payee of the cheque. Whether *Raj Pal Yadav* is holder of the cheques in question in due course is an aspect which cannot be pre-judged at this initial stage and is required to be considered after the evidence is recorded. Section 9 of the Negotiable Instruments Act, 1881 defines the ‘holder in due course’ and its import cannot be pre-judged.

Supreme Court in ‘*Laxmi Dyechem Vs. State of Gujarat and Others*’ (2012) 13 SCC 375 has reiterated that unless the contrary is proved, the presumption shall be made that the holder of a negotiable instrument is holder in due course. Applying the dictum of Supreme Court in *Laxmi Dyechem (Supra)*, to the facts of this case, I do not find it to be a fit case to quash the complaint in question as the plea raised by petitioner is required to be tested at trial.

Consequently, this petition is disposed of, while not commenting

on the merits of this case and with liberty to petitioner to take the plea taken herein before trial court at the appropriate stage.

(SUNIL GAUR)
JUDGE

APRIL 24, 2019

p'ma

