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

Date of decision: 09.12.2019

\+ CRL.M.C. 4454/2017

SHRI ANUJ TANDON ..... Petitioner

Through Mr. B P Singh, Ms. Geetanjali Tyagi & Mr. P. Raj, Advs.

versus

STATE NCT OF DELHI & ANR ..... Respondents

Through Mr. Izhar Ahmed, APP for State
Mr. M. L. Khan, Adv. for R-2
Mr. Tarun K. Bedi, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (ORAL)

1. Vide the present petitioner, the petitioner seeks directions thereby to quash the Complaint bearing CC No. 1193/15 for the offences punishable under Sections 138/141 read with Section 142 of the Negotiable Instruments Act and all proceedings emanating therefrom.

2. Brief fact of the case are that the petitioner alongwith respondent nos. 3 to 5 are running a company in the name of M/s Alpha Proptech (P) Ltd. Builders & Consultants. The respondent No. 2 desired to purchase one flat at

Indrapuram, Ghaziabad, Uttar Pradesh and the respondent No.2 contacted the respondent No. 3 regarding the purchase of the flat and thereafter the respondent No. 3 had insisted the respondent No. 2 to purchase a duplex flat in Niti Khand. Thereafter, on 15.11.2012 the respondent Nos. 3 to 5 through their representative had entered into a written agreement with the wife of the respondent No. 2 for purchasing the property bearing Flat No. 1902, 19th Floor at Indirapuram, Ghaziabad, U.P for the sale consideration of the amount of ₹ 42,50,000/- and out of which a sum of ₹ 20,00,000/- was paid to the respondent Nos.3 to 5 on the same day and remaining amount of ₹22,50,000/- was to be paid at the time of sale deed. Respondent Nos. 3 to 5 started adopting evasive styles for executing the sale deed in favour of wife of the respondent No. 2. On 01.05.2013, respondent Nos. 3 to 5 again entered into an agreement to sell for the sale of the aforesaid flat with the wife of the respondent No. 2 and had further received a sum of ₹ 13 lacs also from the wife of respondent No. 2. On 28.04.2014, respondent Nos. 3 to 5 again entered into an agreement to sell with the wife of respondent No. 2 of the aforesaid flat. Respondent No. 2 as well as his wife approached the respondents Nos 3-5 many times but they failed to execute the sale deed of the aforesaid flat and thereafter respondent Nos. 3, 4 and 5 had issued the cheques for a sum of ₹ 20 Lacs vide cheque bearing No. 025526 dated 06.05.2015 in favour of respondent No. 2 in discharge of their liability and also assured to respondent No. 2 to pay the remaining amount of ₹ 7 Lacs in cash within a short time. Further, two cheques for ₹ 3.5 lacs each, bearing No. 000007 and 000008 dated 06.05.2015 and 01.06.2015 respectively, both drawn on Bank of Baroda, Indirapuram, Ghaziabad from A/c. No. 30750200000398.

3. On the promise and assurance of respondent Nos. 3 to 5, respondent No. 2 presented the aforesaid cheques for encashment in his account in his bank i.e. Standard Chartered Bank, South Extension, Delhi and from where they were sent to banker of the respondent No. 2 for its clearance, but the same were dishonoured and returned unpaid vide cheque returning memos dated 30.06.2015 and 02.07.2015. After dishonouring of the cheques, the complainant intimated respondent Nos. 3 to 5 to return the aforesaid amount, but they refused to pay the same. On receipt of said information respondent No. 2 issued a legal demand notice dated 27.07.2015 to respondent Nos. 3 to 5 at their addresses. On 01.09.2015, a complaint was filed by respondent No. 2 before the concerned court, and the said court, without application of mind, issued summons on 01.10.2015. A perusal of the document from the

Registrar of Companies shows that from 22.04.2015 onwards, the petitioner is neither a Director nor any cheque dated 06.05.2015 bears his signature. Further, the agreement to sell is also silent regarding participation of the petitioner. Learned counsel for petitioner submits that the complaint against the petitioner is wholly illegal in as much as it is gross violation of the provision of Section 138(1) (b) of the Negotiable Instrument Act as there is no legal notice sent to the Petitioner which explains his non involvement in the matter of dishonouring of the cheques in connection with the agreement to sell. Learned counsel for the petitioner further submits that no case under Section 138/141/142 is made out against the petitioner as neither he is a party to the Agreement nor any legal notice has been sent to him nor any cheques were issued by him.

4. The issue for consideration before this Court is whether continuation of criminal proceedings against the petitioner is liable to be quashed on account of failure on the part of the complainant to establish any involvement of the petitioner in the dishonour of cheques mentioned above and non issuance of legal demand notice to the petitioner by the complainant.

5. It is not disputed that the complainant issued notice to the respondent

company as well as two of its directors, being respondent nos. 3 to 5, however, admittedly no notice has been issued to the petitioner under Sections 138 (1) (b) NI Act. As per the aforesaid provision, the payee or the holder in due course of the cheque, as the case may be, shall make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. As per sub clause (c) Section 138 (1) of the said Act, the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

6. Admittedly, in the present case, notice raising demand for payment has not been issued to petitioner by the complainant. Thus, as per the statute, to fasten a liability upon the accused/petitioner, it was mandatory to issue a notice to him under the aforesaid Act, that too within the stipulated period.

7. Reliance in this regard has been placed on the judgment passed by coordinate bench of this court in ***R.L. Varma & Sons (HUF) v. P.C. Sharma (2019 SCC OnLine Del 8964)*** wherein it was held:

"34. *Since the pre-condition of filing a complaint u/s 138 of the*

Negotiable Instruments Act of sending a statutory notice has not been satisfied in the present case, no cause of action arose in favour of the complainant to file the subject compliant. Since no cause of action arose, the petitioner could not have instituted the complaint nor could the trial court as well as the appellate court by the impugned order have convicted the petitioner."

8. Accordingly, in view of the decision passed by this court, I am of the considered view that in the absence of any notice, as stipulated under the Act within the prescribed time period, the summons and proceedings against the petitioner are vitiated and the same deserve to be quashed.

9. In view of the above discussion, the petition stands allowed and the proceedings qua the petitioner are hereby quashed.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 09, 2019
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