

\$~10

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th January, 2019

+ CRL. M.C. 818/2016

MUKESH AGGARWAL Petitioner

Through: Mr. Rajiv Ranjan Prasad proxy
for Mr. R.S. Mann, Adv.

versus

THE STATE (NCT OF DELHI) & ORS. Respondents

Through: Mr. Sanjeev Sabharwal, APP
for the State.
None for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted a criminal complaint case (CC no. 1049/2013) against the second to fourth respondents herein alleging offence under Section 138 of Negotiable Instruments Act, 1881 having been committed by them on account of non-payment inspite of notice of demand sent in the wake of dishonor of cheque bearing no. 539333 dated 18.09.2013 drawn on Axis Bank Ltd. in the sum of Rs. 54,32,500/- statedly issued by them in his favour against the account of the second respondent (company accused), the other respondents statedly being directors incharge of and responsible for conduct of its business. The Metropolitan Magistrate, after preliminary inquiry, issued summons to second to fourth respondents by order dated 03.12.2014.

2. The respondents, who were thus summoned as accused, approached the court of Sessions invoking revisional jurisdiction by filing Crl. Rev. 15-17/2015 which were disposed of by order dated 05.08.2015, the effect whereof is that the proceedings in the criminal complaint case of the petitioner have been stayed till final decision in the case arising out of FIR no. 53/2013 of police station Special Cell wherein the petitioner is stated to be an accused, the said FIR having been registered at the instance of the respondents.

3. It appears that the case of the petitioner has been that on account of friendly relationship he had advanced a loan of an amount to the second respondent (company accused), part of which (Rs. 58,27,500) having been repaid, the balance liability (Rs. 54,32,500) was sought to be discharged by the said respondents handing over the afore-mentioned cheque it having been issued as a post-dated cheque. The cheque, upon presentation, however, was returned unpaid with the remarks "*payment stopped by drawer*". On the other hand, the contention of the respondents before the revisional court was that complaint has been filed on false facts, the cheque having been actually stolen and misappropriated by the petitioner, this being the subject matter of the allegations against him in the criminal case arising out of FIR no. 53/2013, the report of forensic science laboratory (FSL) gathered during investigation of the said case having indicated that the particulars of the cheque were not filled by the respondents.

4. The contention of the respondents before the revisional court was that magisterial court has ignored the fact that the petitioner was looking after the administrative functions of the company accused and was custodian of the cheque books and at times he would get blank cheque signed from the third respondent. The petitioner, on the other hand, contends that the FIR has been got registered under directions of the Additional Chief Metropolitan Magistrate on basis of misleading facts.

5. The revisional court considered it proper to stay the proceedings in the criminal complaint case under Section 138 NI Act against the respondents on the ground that the same would “*unnecessarily prejudice*” the trial court while the criminal case arising out of FIR no. 53/2013 is pending.

6. Feeling aggrieved by the said directions of stay, the petitioner approached this Court by this petition under Section 482 Cr.P.C. invoking the inherent power and jurisdiction. The second to fourth respondents though served and having entered appearance, have not filed any reply. They have failed to appear at the time of hearing on the matter, the matter having been passed over earlier in the day, similar situation continuing to prevail till late hours in post lunch session.

7. This Court finds the view taken by the revisional court to be wholly unfair and unjust. Though questions would arise in the criminal case under Section 138 NI Act as to whether cheque in question had come in the hands of the petitioner legitimately or not,

the contentions of the respondents are a matter of defence which will have to be raised by them, the burden of proof of the requisite facts in such regard being placed on them. There is no reason why the case arising out of above-mentioned FIR should have a primacy or priority over the case of the petitioner against the opposite party.

8. The petition is, thus, allowed. The impugned order staying the proceedings in the case under Section 138 NI Act is hereby vacated. However, nothing said in this order shall be treated as final expression of opinion on merits.

R.K.GAUBA, J.

JANUARY 28, 2019

nk