

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

+ **CRL.M.C. 626/2020**

Date of Decision: 29.06.2020

IN THE MATTER OF:

SATENDRA PAL SINGH MALIK Petitioner

Through: Mr.Rohan Thawani, Advocate

Versus

DHIRENDRA RAJ Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

CrI.M.A. Nos. 8282-8283/2020

1. The present applications have been filed on behalf of the petitioner seeking stay and exemption on urgency basis.
2. With the consent of learned counsel for the petitioner, the main petition is taken up for hearing today itself.
3. The applications stand disposed of.

CRL.M.C. 626/2020

1. The present petition has been filed on behalf of the petitioner under Section 482 Cr.P.C. seeking quashing of summoning order dated

20.05.2019 passed in Complaint Case no.1951/2019 filed under Section 138 of N.I. Act.

2. Briefly, as per the facts stated in the complaint, the complainant retired on 30.05.2015 and received Rs. 22,43,999/- as retirement benefits. He also got extension for a period of 2 years in the school. The petitioner and the complainant were known to each other as they were teaching in the same school. In the year 2016, the petitioner approached the complainant seeking a friendly loan of Rs. 28,05,000/- to clear his home debts and also for marriage of the daughter of his brother-in-law. The complainant agreed and gave the loan of Rs 28,05,000/- in installments, partly in cash and partly by RTGS.

3. The petitioner had agreed to repay the loan by July, 2017. The petitioner did not repay the loan in the agreed time and sought more time. A part payment of Rs. 7,50,000/- (Rs. 5,50,000/- by cheque and Rs. 2,00,000/- by cash) was made on 04.10.2018. Subsequently, after much persuasion, a cheque bearing no. 351231 dated 11.04.2019 drawn on SBI, Kalyanpuri, Delhi for the remaining part payment of Rs. 20,55,000/- was issued by the petitioner. The aforesaid cheque was presented on the same day but was dishonored with the remarks "insufficient funds".

4. A statutory notice dated 25.04.2019 under Section 138 NI Act was issued by the complainant and was sent by the Regd. Post on 26.04.2019 at his residential address as well as the school address. A reply dated 13.05.2019 was sent by the petitioner denying any liability and rather stating that the payment of Rs. 5,50,000 was not towards repayment but infact, a loan advanced by the petitioner to the complainant's son. It was also stated that the petitioner had lost 6/7 signed cheque leaves of SBI

bank for which he also gave a complaint to the police. He believed that the cheques were stolen and misused by the complainant.

5. Resultantly, the complainant filed a criminal complaint under Section 138 N.I. Act in the court of ACMM, Karkardooma, Delhi on 14.05.2019 in which, after examining the complainant, the petitioner has been summoned vide order dated 20.05.2019, the order impugned herein.

6. Learned counsel for the petitioner has raised three contentions. His first contention is that the petitioner never received any legal notice at the school address and the only notice received at the residential address was served on 06.05.2019, for which he has placed reliance on the tracking report filed alongwith the complaint. He thus urged that the criminal complaint filed by the complainant on 14.05.2019 was before the expiry of mandatory 15 days period from the service of legal notice.

7. A perusal of the tracking reports filed alongwith the complaint, as placed on the record in this petition, would show that although the legal notice sent by Regd. Post at the residential address of the petitioner was delivered on 06.05.2019 but the legal notice sent by Regd. Post at the petitioner's school address was delivered on 27.04.2019. Further, the legal notice dated 25.04.2019 mentioned both the addresses of the petitioner. However, in the petitioner's reply, there is no mention of either the date of receipt of the legal notice or the fact that no notice was served upon him at the school address. As per the tracking reports, the legal notice which was sent at the petitioner's school address was delivered on 27.04.2019. Thus, calculating the 15-days period from the aforesaid date, would make the complaint filed beyond the 15 days' time period, and thus, prima facie, not premature. Needless to add, the

contention has no merit at this stage and needs to be tested the time of trial.

8. It is next contended on behalf of the petitioner that the petitioner had already lodged a police complaint (NCR) on 25.09.2018 regarding loss of 6/7 cheque leaves of SBI bank. It is contended that the same were stolen by the complainant and the present cheque being one of them, is misused.

9. I have perused the NCR filed by the petitioner as well as the reply filed on behalf of the petitioner to the legal notice. The NCR dated 25.09.2018 lodged by the petitioner, a resident of Vaishali, Ghaziabad, U.P. is about loss of 6/7 signed cheque leaves at Mayur Vihar-I, Delhi and not their theft. Further, the NCR neither mentions the serial numbers of the cheques nor the name of the complainant. In his reply to the legal notice, it was stated that the cheque leaves were stolen by the complainant from the petitioner's house (which is in Vaishali, Ghaziabad) however, no specific date has been mentioned as to when the complainant visited the petitioner's house and stole his signed cheques. The aforementioned two places are distant. Prima facie, the defence taken appears to be self-contradictory.

10. The disputed questions of facts are not to be gone into while exercising power under Section 482 of the Cr.P.C. The Supreme Court in S. Krishnamoorthy v. Chellammal reported as **(2015) 14 SCC 559** held that when defence of the accused is only factual in nature which is neither admitted by the complainant, nor apparent on the face of the record, then it could be appreciated only by the trial court after the parties have led their evidence.

11. In Rajeshbhai Muljibhai Patel and Others v. State of Gujarat and Another, reported as **2020 SCC OnLine SC 161**, the Supreme Court observed that:

“21....When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under Section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there are inter se dispute between appellant No. 3 and respondent No. 2. Without keeping in view the statutory presumption raised under Section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C. No. 367/2016 filed under Section 138 of N.I. Act.”

12. Lastly, it was contended that the alleged loan given by the complainant has not been proved, inasmuch as the amount has not come to the petitioner's account, for which he has relied upon the petitioner's bank statement. Again, keeping in view the exposition of law on the criteria of the exercising the jurisdiction under Section 482 Cr.P.C., the contention raised is to be tested in trial.

13. In my considered view, all the contentions raised by the learned counsel for the petitioner are matters of trial and cannot be gone into at this stage. In view of the foregoing discussion, the petition is hereby dismissed. The date already fixed in the case stands cancelled.

14. It is, however, made clear that nothing stated herein shall be considered as an expression of opinion on the merits of the case and the same is only a prima facie view to decide the present petition.

(MANOJ KUMAR OHRI)
JUDGE

JUNE 29, 2020
'dc'

