

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

+ **CRL.M.C. 2149/2019**

Date of Decision 09/11/2020

IN THE MATTER OF:

M/S CHESONS ENTERPRISES

..... Petitioner

Through: Ms. Pankhuri, Mr. Mayank
Kshirsagar, Mr. Parthasarathy
Bose, Mohammad Arif and Mr.
Akhilesh Yadav, Advocates.

Versus

M/S CADIZ PHARMACEUTICALS PVT. LTD.

..... Respondent

Through: None.

(VIA VIDEO CONFERENCING)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

CRL. M.A. 15326/2020 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

CRL.M.C. 2149/2019 and CRL. M.A. 15325/2020 (Stay)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 11.09.2019 passed by the learned ASJ, Karkardooma Courts, Delhi whereby the petitioner's

challenge to the summoning order dated 05.09.2018 passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi in C.C. No. 3738/2018 was dismissed.

2. The brief facts as noted in the impugned order are reproduced herein below:-

“In brief the facts leading to the present revision are that the respondent herein filed a complaint u/s 200 Cr.P.C. against the revisionist for an offence punishable u/s 138 NI Act stating therein that it is a company dealing in trading of several medicines all over India. The revisionist is engaged in the business of medicines and approached it for purchase of medicines on credit basis. Accordingly, a running account of the revisionist was opened by the respondent company. In May 2018, a sum of Rs. 1,86,369/- was found due against the revisionist as per the statement of account and on demand, the revisionist issued cheque bearing no. 926091 dated 04.06.18 for the said amount in discharge of its liability. The said cheque when presented for encashment by the respondent, was dishonoured for the reason 'payment stopped' as informed to the respondent vide bank memo dated 05.06.18. A legal demand notice dated 29.06.18 was issued to the revisionist which was sent through registered post but it was not replied nor any payment was made and hence, the complaint.”

3. Ms. Pankhuri, learned counsel for the petitioner submitted that at the time of entering into the Agreement/Distributor Profile Form, the cheque in question was given as security and not towards the discharge of any debt or liability. In this regard, learned counsel referred to Column No. 22 of the aforementioned Agreement where the details of the cheque in question were given. It is thus contended that as the cheque was given only towards the security and not towards discharge of any debt or

liability, no offence under Section 138 of the Negotiable Instruments Act, 1881 was committed by the petitioner.

4. A perusal of Column Nos. 21 and 22 of the aforementioned agreement would read as follows :-

“21. Proposed security deposit for Medley (Zenkare Division) - Rs. 1 lac - 926089 - 20.06.16.

Enclosed DD/cheque details of security – State Bank of India 926090.

Security Deposit should be given in favour of CADIZ Pharmaceuticals Pvt. Ltd. Delhi.

22. Enclosed 2 Blank Cheques details 926090-926091, SBI Indore.”

5. From the above, it is apparent that at the time of entering into aforesaid agreement, two other cheques were given. The first cheque bearing no. 926089 for Rs. 1 lac was given for proposed security deposit for Medley (Zenkare Division) and another cheque bearing no. 926090 was given towards security. The ‘cheque in question’ bearing no. 926091 was also handed over in terms of Column No. 22 but no purpose was mentioned. A perusal of the impugned order should also show that rival contentions of both the parties were noted. The complainant contended that on petitioner’s failure to pay his dues, the ‘cheque in question’, which was handed over at the time of entering into the above agreement, became a cheque for the liability existing as on that day. On the other hand, it was submitted on behalf of the petitioner that the complainant had not produced any bills or invoices of any liability and reliance was placed only on one stock transfer note.

During the course of arguments in the present petition, learned counsel for the petitioner fairly did not deny the petitioner’s signatures

on the cheque in question however, it was submitted that at the time of handing over, a blank cheque was given.

6. After going through the impugned order and the contentions raised by the learned counsel for the petitioner, it is apparent that disputed questions of facts are raised which require adjudication in the trial. In S. Krishnamoorthy v. Chellammal reported as (2015) 14 SCC 559, the Supreme Court held as follows :-

“5. The above defence of the respondent (the accused) before the High Court, in the petition filed under Section 482 of the Code, is nothing but absolutely factual in nature, which is neither admitted by the complainant, nor apparent on the face of the record. Such type of disputed factual defences could have been appreciated only by the trial court, after the parties led their evidence. In our opinion, the High Court committed grave error of law in examining the allegations and counter-allegations which are disputed and factual in nature in a proceeding under Section 482 of the Code.

6. In Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] , this Court, explaining the law on the scope of Section 482 of the Code, has observed, in para 32, as under: (SCC p. 448)

“32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trial to find out whether the case would end in conviction or acquittal.”

7. In view of the above position of law, we have no option but to set aside the order passed by the High Court as it has entered into highly disputed questions of fact and concluded that the material before it was sufficient to cause reasonable suspicion in the case of the complainant. That is not the ground on which powers under Section 482 of the Code can be exercised by the High Court.”

7. The Supreme Court in Rajeshbhai Muljibhai Patel & Others v. State of Gujarat & Anr. reported as **(2020) 3 SCC 794**, held as follows :-

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

8. In so far as issuance of blank cheque is concerned, in Bir Singh v. Mukesh Kumar reported as **(2019) 4 SCC 197**, the Supreme Court held that if a signed blank cheque is voluntarily presented to a payee towards some payment, the filling up of an amount and other particulars by the payee would not invalidate the cheque. The onus to prove that the cheque was not in discharge of any debt or liability would still remain on the accused which is to be discharged by adducing evidence.

9. Whether the cheque in question was issued towards the security and not towards any debt or liability is a matter of defence which could be determined in the trial on the petitioner adducing his evidence.

10. At this stage, I deem it profitable to refer to the decision of the Supreme Court in HMT Watches Limited v. M.A. Abida & Another reported as (2015) 11 SCC 776, where it was held as follows :-

“10....Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplained with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

11. Recently, in Womb Laboratories Pvt. Ltd. v. Vijay Ahuja & Ors. reported as 2019 (4) RCR (Criminal) 358, it was held that whether the cheques were given towards security and not towards discharge of any debt or liability is a triable issue for which the relevant facts need to be proved.

12. In view of the above exposition of law, I do not find any merit in the contentions raised by the learned counsel for the petitioner. It is for the petitioner to establish in the trial that the cheque in question was not given towards discharge of any debt or liability. Consequently, I find no illegality in the impugned order and the same is upheld. The present petition is dismissed. Miscellaneous application is disposed of as infructuous.

13. Learned counsel for the petitioner lastly contended that the petitioner is aged about 56 years and is a resident of Indore and the next date of hearing before the trial court is fixed for 11.12.2020. She prayed that in view of the circumstances created by COVID-19 pandemic, the petitioner may be permitted to appear before the trial court through Video Conference only for 11.12.2020. She, on instructions, submitted that the petitioner undertakes to appear physically before the trial court on any date fixed after 11.12.2020. The petitioner would be at liberty to move an appropriate application before the trial court which shall be dealt with in accordance with law.

14. Copy of the judgment be communicated to the trial court electronically.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 09, 2020

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