

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

Reserved on : 19.11.2019
Pronounced on : 03.03.2020

+ CRL.M.C. 4718/2019 & CRL.M.A.36154/2019, CRL.M.A.38201/2019,
CRL.M.A.36155/2019 & CRL.M.A.36156/2019

M/S VEDAVAAG SYSTEMS LTD. & ANR. Petitioners

Through Mr. Siddharth Luthra, Sr. Adv. with
Mr. Mukesh Kumar and Ms.Subhangi, Advs.

versus

RICOH INDIA LTD. Respondent

Through Mr. S. Bajaj, Adv. with Mr. Vikram
Sobti, Mr. Mehul Parti and Mr. Ashwani Malhotra,
Advs.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

CRL.M.A.36155/2019 & CRL.M.A.36156/2019

Exemption allowed, subject to just exceptions.

The applications are disposed of.

CRL.M.C. 4718/2019 & CRL.M.A.36154/2019, CRL.M.A.38201/2019

1. The present petition U/s 482 Cr.P.C. has been filed by the petitioners with the following prayers :

- "a. Quash summoning order dated 01.06.2016 passed by the Ld. MM-05, Patiala House Courts, New Delhi in complaint Case No. 10159 of 2017 and proceedings there under;
- b. Quash order and notice dated 22.07.2019 passed by the Ld. MM-05, Patiala House Courts, New Delhi in Complaint Case No. 10159 of 2017 vide which the Ld. MM was pleased to frame notice against the petitioner No. 2 under Section 251 of the Code, 1973 and proceedings there under;
- c. Quash Complaint Case No. 10159 of 2017 and proceedings there under."

2. On 10.12.2014, petitioner No. 1 had placed an order for procurement of IT equipments worth Rs. 46,41,40,968/- with the respondent company. According to the petitioner No. 1 two undated cheques worth Rs. 23,20,70,484/- each were issued by the petitioner company as security alongwith purchase order. According to the petitioner No. 1 it was decided that the payment was to be made in 24 monthly installments as per purchase order and in case of nonpayment of two consecutive installments the security cheques were liable for deposits. On 12.12.2014, petitioner No. 1 wrote a letter to the respondent that the respondent has to take back the material in case petitioner No. 1 is unable to sell the material in the market during these two years of payment schedule in lieu of payment. According to petitioner No. 1 on 31.05.2015, a notice of assignment of debt was sent by respondent to petitioner No. 1 intimating that debt of Rs. 45,12,48,163/- has been assigned to Citibank.

3. On the other hand, according to the respondent, petitioner No. 1 herein gave two cheques amounting to Rs. 23,20,70,484/- each to the respondent in discharge of its liabilities in respect of purchase order dated 10.12.2014. As per schedule 1 of the said purchase order if the petitioner No. 1 failed to make payment of two consecutive installments, the respondent could deposit the said cheques to recover the debt.

4. On 31.01.2015, petitioner No. 1 discharged installment by paying Rs. 1,28,92,805/- but thereafter no payment was made by petitioner No. 1 to the respondent despite having received all the goods under the purchase order. On 25.03.2015, receivable purchases agreement was entered between the respondent and Citibank whereby respondent assigned the receivables due from the petitioner under the purchase order to Citibank. As per clause 7.1 of RPA, if Citibank did not receive the receivables in full from petitioner No. 1, the respondent was obligated to repurchase such receivables at the Citibank's option and demand.

5 Since the petitioner No. 1 failed to make the payment due and receivable to Citibank, so respondent was compelled to purchase the said receivables from the Citibank. Accordingly, the debt due from petitioner No. 1 was remitted back to respondent. On 16.07.2015, respondent made payment of Rs. 40,61,23,346/- to Citibank as petitioner did not make the payment to Citibank. Repeated requests were made by the respondent to petitioner No. 1 to clear its dues under the purchase order but to no avail. So on 05.04.2016, respondent was constrained to present the two cheques for encashment as petitioner No. 1 failed to pay two consecutive

installments but the cheques were returned unpaid on 06.04.2016 as payment was stopped by the drawer. It is then on 28.05.2016, respondent filed complaint U/s 138 NI Act and the petitioners were summoned by the Ld. Metropolitan Magistrate vide order dated 01.06.2016 and notice was framed on 22.07.2019.

6. The petitioner feeling aggrieved, filed the present petition invoking jurisdiction of this Court U/s 482 Cr.P.C.

7. It is submitted by the Ld. Sr. counsel for the petitioners that the cheques issued were in the nature of security cheques and not cheques in discharge of debt or other liability. It is further argued that there was no legally enforceable debt or liability at the time of drawing of cheques. It is further argued by the Ld. Sr. Counsel for the petitioners that by virtue of assignments of debt by respondent to Citibank, Citibank had the right to claim the money which is also mandated by Factoring Regulation Act, 2011 and thus the complaint u/s 138 of NI Act filed by respondent before Ld. MM was not maintainable. Ld. Sr. Counsel for the petitioners has relied upon :

1. **Exports India and Anr. V. State and Anr. (Del HC) (2006)**
2. **M/s College Culture and ors. V. Apparel Export Promotion Council and Anr (Del HC) (2007):**
3. **Indus Airways Pvt. Ltd. and Ors. v. Magnum Aviation Pvt Ltd. and Anr (SC) (2014)**
4. **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd. (SC)(2016)**

8. On the other hand, it is argued by the Ld. counsel for the respondent that the cheques issued by petitioner No. 1 were not security cheques as the goods were delivered by the respondent to the petitioner No. 1 pursuant to
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the purchase order. It is further argued that the petitioner No. 1 failed to make the payment under the purchase order after the first payment and schedule 1 of the purchase order provides that if the petitioner No. 1 failed to make payment of two consecutive installment, respondent could deposit and encash the said cheques to recover the debt. It is further argued that the entire amount mentioned in the purchase order was considered as a debt due and payable by the petitioner No. 1 and as the petitioner No. 1 failed to pay two consecutive installments to discharge the debts, therefore, there exists a legally enforceable debt against the petitioners. It is further argued that as per the receivable purchases agreement entered between the respondent and Citibank, respondent assigned the receivables due from petitioner No. 1 under the purchase order to Citibank and as per clause 7.1 of the RPA, if the Citibank did not receive the receivables in full from the petitioner No. 1 the respondent was obligated to purchase such receivables at the Citibank's option and demand. It is further argued that as the petitioner No. 1 failed to make the payment to the Citibank, the debt due from petitioner No. 1 was remitted back to the respondent. It is argued that there are various triable issues which can only be decided during the course of trial. He relied upon :

- 1. Shashi Adlakha v/s Housing Development Finance Corporation Ltd. (Delhi High Court 08.02.19).**
- 2. Rajiv Thapar and Ors vs Madan Lal Kapoor (2013) 3 SCC 330**
- 3. Ravi Chopra v State and Another (Delhi High Court 13.03.2008)**

9. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.PC which have been discussed

in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. It is seen in many cases that the petitioners with malafide intention and to prolong the litigation raise false and frivolous pleas and in some cases, the petitioners do have genuine defence, but instead of following due procedure of law, as provided under the NI Act and the Cr.PC, and further, by misreading of the provisions, such parties consider that the only option available to them is to approach the High Court and on this, the High Court is made to step into the shoes of the Metropolitan Magistrate and examine their defence first and exonerate them. The High Court cannot usurp the powers of the Metropolitan Magistrate and entertain a plea of accused, as to why he should not be tried under Section 138 of the NI Act. This plea, as to why he should not be tried under Section 138 of the NI Act is to be raised by the accused before the Court of the Metropolitan Magistrate under Section 251 of the Cr.PC & under Section 263(g) of the Cr.PC. Along with this plea, he can file necessary documents and also make an application, if he is so advised, under Section 145(2) of the NI Act to recall the complainant to cross-examine him on his plea of defence. However, only after disclosing his plea of defence, he can make an application that the case should not be tried summarily but as a summons trial case.

10. An offence under Section 138 of the NI Act is technical in nature and defences, which an accused can take, are inbuilt; for instance, the cheque was given without consideration, the accused was not a Director at that time, accused was a sleeping partner or a sleeping Director, cheque was given as a security etc. etc., the onus of proving these defences is on the accused alone, in view of Section 106 of the Indian Evidence Act, 1872. Since the mandate of the legislature is the trial of such cases in a summary manner, the evidence already given by the complainant by way of affidavit is sufficient proof of the offence and this evidence is not required to be given again in terms of section 145(1) of the NI Act and has to be read during the trial. The witnesses i.e. the complainant or other witnesses can be recalled only when the accused makes such an application and this application must disclose the reason why the accused wants to recall the witnesses and on what point the witnesses are to be cross examined.

11. The offence under Section 138 of the NI Act is an offence in the personal nature of the complainant and since it is within the special knowledge of the accused as to why he is not to face trial under section 138 N.I. Act, he alone has to take the plea of defence and the burden cannot be shifted to complainant. There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. If an accused has a defence against dishonour of the cheque in question, it is he alone who knows the defence and responsibility of spelling out this defence to the Court and then proving this defence is on the accused. Once the complainant has brought forward his case by

giving his affidavit about the issuance of cheque, dishonour of cheque, issuance of demand notice etc., he can be cross-examined only if the accused makes an application to the Court as to, on what point he wants to cross examine the witness(es) and then only the Court shall recall the witness by recording reasons thereto.

12. Sections 143 and 145 of the NI Act were enacted by the Parliament with the aim of expediting trial in such cases. The provisions of summary trial enable the respondent to lead defence evidence by way of affidavits and documents. Thus, an accused who considers that he has a tenable defence and the case against him was not maintainable, he can enter his plea on the very first day of his appearance and file an affidavit in his defence evidence and if he is so advised, he can also file an application for recalling any of the witnesses for cross-examination on the defence taken by him.

13. In view of the procedure prescribed under the Cr.PC, if the accused appears after service of summons, the learned Metropolitan Magistrate shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.PC and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of NI Act for recalling a witness for cross-examination on plea of defence. If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant. Once the summoning orders in all

these cases have been issued, it is now the obligation of the accused to take notice under Section 251 of Cr. PC., if not already taken, and enter his/her plea of defence before the concerned Metropolitan Magistrate's Court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witnesses, they should do so before the Court of Metropolitan Magistrate.

14. In this case, notice u/s 251 Cr.P.C has already been framed against the petitioners and the petitioners have pleaded not guilty and claimed trial.

15. Now, coming to the jurisdiction, suffice it to say that the Court, in exercise of its jurisdiction under Section 482 Cr.PC. cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts. The issues involving facts raised by the petitioner by way of defence can be canvassed only by way of evidence before the Trial Court and the same will have to be adjudicated on merits of the case and not by way of invoking jurisdiction under Section 482 Cr.PC. at this stage.

16. In ***Rajiv Thapar & Ors. V. Madan Lal Kapoor***, (2013) 3 SCC 330, it has been held by the Supreme Court as under:

“28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful

in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/ complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, in as much as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the

material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

17. Upon analyzing the provisions of the NI Act, it is clear that Section 138 of the Act spells out the ingredients of the offence as well as the conditions required to be fulfilled before initiating the prosecution.

18. These ingredients and conditions are to be satisfied mainly on the basis of documentary evidence, keeping in mind the presumptions under Sections 118 and 139 of the NI Act and Section 27 of the General Clauses Act, 1897 as well as the provisions of Section 146 of the Act.

19. The provisions of Sections 142 to 147 lay down a Special Code for the trial of offences under the Chapter XVII of the N.I. Act. While considering the scope and ambit of the amended provisions of the Act, the Supreme Court in *Mandvi Co. Op. Bank Ltd. v. Nimesh B. Thakore*, AIR 2010 SC 1402, has held that the provisions of Sections 143, 144,

145 and 147 expressly depart from and override the provisions of the Cr.PC, the main body of adjective law for criminal trials. The Supreme Court has further held as under:-

"17. It is not difficult to see that sections 142 to 147 lay down a kind of a special code for the trial of offences under Chapter XVII of the Negotiable Instruments Act and sections 143 to 147 were inserted in the Act by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising on the right of the accused for a fair trial."

20. The parameters of the jurisdiction of the High Court, in exercising jurisdiction under Section 482 Cr.PC, are now almost well-settled. Although it has wide amplitude, but a great deal of caution is also required in its exercise. The requirement is, the application of well known legal principles involved in each and every matter. Adverting back to the facts of the present case, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 Cr.PC at this stage. More so, the defence as raised by the petitioners in the petition requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.PC and the same can only be proved in the Court of law. Reliance can be placed upon *"State of Madhya Pradesh Vs. Yogendra Singh Jadon & Anr"*., Criminal Appeal No. 175 of 2020 (Arising out of SLP (Criminal) No. 172 of 2017) decided by the Hon'ble Supreme Court on January 31, 2020 in which it has been held that "the power under Section 482 of the Code of Criminal Procedure, 1973 cannot

be exercised where the allegations are required to be proved in Court of law".

21. The main issues apart from other issues involved in the present petition which could be raised by either of the parties are :

- (a) Whether the cheques issued by petitioner No. 1 are in the nature of security cheques?
- (b) Whether there exists a legal enforceable debt payable by petitioners to respondent in view of receivable purchases agreement entered between respondent and Citibank whereby respondent assigned receivables due from petitioner No. 1 under the purchase order to Citibank?
- (c) Whether the complaint u/s 138 of NI Act filed by respondent was maintainable in view of assignment of debt by the respondent to Citibank?

22. In the instant case, all these issues mentioned hereinabove involves disputed question of facts and law and cannot be decided unless and until the parties go to trial and lead their respective evidence.

23. Accordingly, I find no flaw or infirmity in the proceedings pending before the Trial Court. However, the Trial Court shall certainly consider and deal with the contentions and the defence of the petitioner in accordance with law.

24. The prayers are untenable in law. Accordingly, the petition is dismissed and Crl. M.A. 36154/2019 & Crl. M.A. 38201/2019 are also disposed of accordingly.

RAJNISH BHATNAGAR, J.

MARCH 3, 2020, Sumant

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