

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

CRL.M.C. 2973/2018 & CrI.M.A.No.10513/2018

Reserved on : 30.01.2020

Date of Decision : 03.02.2020

IN THE MATTER OF:

ANSH CHUGH

..... Petitioner

Through: Mr. Lalit Basoya and Ms. Mehak
Kalra, Advs.

versus

PRADEEP GUPTA

..... Respondent

Through: Mr. Jai Sahai Endlaw, Mr.
Shivansh Soni and Ms. Deepika
Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present proceedings are directed for quashing of Complaint Case No.8777/2017 and against order dated 12.07.2017 vide which the petitioner was summoned for the offence punishable under Section 138 N.I. Act.

2. Learned counsel for the petitioner submitted that the present case relates to dishonour of cheque bearing No.436505 dated 02.01.2017 for Rs.1,25,00,000/- drawn on State Bank of India, Saket, New Delhi.

3. He submitted that the aforesaid cheque was presented for encashment by the respondent on 17.04.2017, which was beyond the period of its validity. He has referred to the RBI notification NO.(RBI/2011-12)/251 dated 04.11.2011 whereby in exercise of power conferred under Section 35A of the Banking Regulations Act, 1949, the

Reserve Bank directed that with effect from April, 1, 2012, Banks should not make payments of cheque/drafts/pay orders/banker's cheques bearing that date or any subsequent date, if they are presented beyond the period of three months from the date of such instrument.

4. Learned counsel for the petitioner contended that even otherwise the aforesaid cheque was stolen and missing report was filed by the petitioner on 10.10.2016 for loss of the cheque in question along with other cheque leaflets.

5. Learned counsel for the respondent, on the other hand, has sought dismissal of the present petition on the ground that so far only summoning order has been issued against the petitioner and objection, if any, ought to be taken before the Trial Court at the time of framing of notice. He has placed reliance on Rajeev Ranjan Sinha V Sushil Kumar Saxena and Ors. reported as **2014(4) Crimes 417(Del)**, Jitender Singh v Sanjay Kumar reported as **2016 [2] JCC [NI] 78**. In addition, he has also referred to Thomas Varghese v P. Jerome reported as **1992 CriLJ 3080** and A.V Murthy v B.S Nagabasavanna reported as **AIR 2002 SC 985**.

6. It is trite law that at the stage of summoning, the Magistrate does not act like a post office. The application of mind, as required even at the stage of cognizance/issuance of process came before the Supreme Court in Pepsi Foods Ltd. & Ors. v. Special Judicial Magistrate & Ors. reported as **(1998) 5 SCC 749**, held as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into

motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.

7. Admittedly, the cheque was presented to the drawee bank after the period of expiry of its validity of three months, which is to be calculated from the date mentioned on the cheque. The Clause (a) of Proviso to Section 138 of N.I. Act stipulates that Section 138 shall not be applicable unless the cheque is presented to the bank within a period of six months (the period has been reduced from 6 months to 3 months vide the aforementioned RBI notification dated 04.11.2011) from the date on which it is drawn or within the period of its validity, whichever is earlier.

8. In Shri Ishar Alloys Steel Ltd. v. Jayaswals NECO Ltd. reported as **(2001) 3 SCC 609**, the Supreme Court held that non-presentation of the cheque to the drawee bank within the period specified in the section would absolve the person issuing the cheque of his criminal liability under Section 138 N.I. Act.

9. The Supreme Court in MSR Leathers v. S.Palaniappan & Anr. reported as **2012 SCC OnLine SC 791**, it was held as under:-

“14. Presentation of the cheque and dishonor thereof within the period of its validity or a period of six months is just one of the three requirements that constitutes ‘cause of action’ within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law than in penal statutes....”

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19.A careful reading of Sections 138 and 142, as noticed above, makes it abundantly clear that the cause of action to institute a complaint comprises the three different factual prerequisites for the institution of a complaint to which we have already referred in the earlier part of this order. None of these prerequisites is in itself sufficient to constitute a complete cause of action for an offence under Section 138. For instance if a cheque is not presented within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier, no cause of action would accrue to the holder of the cheque even when the remaining two requirements, namely service of a notice and failure of the drawer to make the payment of the cheque amount are established on facts.....”

10. Learned counsel for the respondent has fairly not disputed the aforesaid legal position, though he urged that all such issues could be considered at the stage of framing of notice.

11. Reliance placed by the learned counsel for the respondent in Rajeev Ranjan Sinha(supra), Jitender Singh(supra), Thomas Varghese(supra) and A.V Murthy(supra) is misplaced as the issue involved in the present case was not raised in the aforesaid judgments. The validity of a cheque goes to the root of initiation of proceedings under Negotiable Instruments Act. There is no cause of action if the cheque presented was not valid.

12. In view of above enunciation of law and the admitted facts, the summoning order dated 12.07.2017 passed by the Trial Court is quashed and set aside. Resultantly, the present petition is allowed and Complaint Case No. 8777/2017 is quashed. The pending application is also disposed of accordingly.

13. A copy of this judgment be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 03, 2020
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