

+ **CRL.M.C. 1976/2021 & CRL.M.A. 13371/2021**

IN THE MATTER OF:

..... Petitioners

STATE & ANR. Versus

..... Respondents

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been preferred by the petitioners under Section 482 Cr.P.C. seeking quashing of Complaint Case No. 4322/2020 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act') as well as the summoning order dated 25.03.2021 passed by the learned MM-05 (NI Act), Central District, Tis Hazari Courts, Delhi.

2. Learned counsel for the petitioners has submitted that the impugned summoning order was passed without application of mind. He has primarily contended that the cheque in question was materially altered by the complainant by changing the date for revalidation without the consent and knowledge of the petitioners. He has further submitted

that in view of the mandate of Section 87 NI Act, the cheque had become void. In support of his submissions, learned counsel for the petitioners has placed reliance on the decision of the Supreme Court in Veera Exports v. T. Kalavathy reported as **(2002) 1 SCC 97**.

3. Learned counsel for the petitioners also submitted that in the present case, the offence under Section 138 NI Act was not made out as the cheque in question was initially honoured and the amount credited in the account of the complainant. However, later, on protest lodged by the petitioners, the amount was transferred back from the complainant's account to that of petitioner No. 1. An SMS received from the State Bank of India is also placed on record in this regard. Lastly, it is contended that the cheque in question being signed by petitioner No. 2 and no specific allegations having been levelled against petitioner No. 1, the Trial Court ought not to have summoned petitioner No. 1.

4. I have heard learned counsel for the petitioners and also gone through the case record.

5. Brief facts shorn of unnecessary details are that the complainant had rented out the 3rd floor of the property bearing No. 3C/36, *New Rohtak Road, Delhi* to petitioner No. 1. In furtherance of disputes, a legal notice dated 30.12.2019 was sent by him claiming a sum of Rs.2,91,929/- from petitioner No. 1 towards the reimbursement of losses suffered by him. Petitioner No. 1 sent a reply dated 23.01.2020 to the complainant's notice denying his liability, due to which the complainant filed a suit for recovery of a sum of Rs.2,93,555/- against petitioner No. 1, which is stated to be pending before the concerned Court. Although petitioner No. 1 initially denied his liability, he later on contacted the complainant and

re-handed over a cheque for Rs.55,000/- dated 22.12.2019 drawn on State Bank of India, East Park Road, New Delhi signed by petitioner No. 2 who is the mother/authorized signatory of petitioner No. 1 by changing the date on the said cheque. On presentation, the cheque amount was initially credited but, later on, because of protest made by petitioner No. 1, the said credit entry was reversed by the Bank in favour of petitioner No. 1. It is stated that petitioner No. 1 had earlier given the cheque in issue to the complainant as security deposit.

6. The short issue involved is of applicability of Section 87 NI Act to the facts of the present case and whether the proceedings pending before the Trial Court are liable to be quashed in view of the submissions made on behalf of the petitioners. At this stage, I deem it apposite to refer to Section 87 NI Act, which reads as under:-

“87. Effect of material alteration.—Any material alteration of negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

***Alteration by indorsee,** And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.*

The provisions of this section are subject to those of sections 20, 49, 86 and 125.”

7. Section 87 NI Act consists of two parts. The first part indicates that in case the alteration is made with the consent of both the parties, they would be disentitled to complain against such alteration. Only when a cheque is altered by the payee or holder without the consent of the

drawer, the issue of cheque becoming void would arise. In the present case, it is contended that the material alteration was done in the cheque by the complainant without the consent of the petitioners. On the other hand, in the complaint, it has been alleged that it was petitioner No. 1 who re-handed over the cheque containing the material alteration. From above, it is apparent that the factum of 'who carried out the material alteration' is disputed and a disputed question of fact cannot be gone into by this Court while exercising its powers under Section 482 Cr.P.C. The petitioners would need to adduce evidence in trial in support of their assertion and to rebut the presumption. This Court deems it profitable to allude to the following observations of the Supreme Court in Bir Singh v. Mukesh Kumar reported as (2019) 4 SCC 197.

“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.”

8. In Rajeshbhai Muljibhai Patel and Others v. State of Gujarat and Another reported as (2020) 3 SCC 794, the Supreme Court has observed that presumption under Section 139 NI Act and Section 118A Indian

Evidence Act are statutory presumptions which can be rebutted by adducing evidence. It has also been observed that when disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the High Court ought not to exercise its powers under Section 482 Cr.P.C. to quash the proceedings arising out of Section 138 NI Act. To a similar extent are the observations of the Supreme Court in Kaptan Singh v. State of Uttar Pradesh and Others reported as **2021 SCC OnLine SC 580**, wherein it has been reiterated that appreciation of evidence is impermissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C.

9. Learned counsel for the petitioners has placed reliance on the decision in Veera Exports (Supra) but the same is entirely misplaced. In the captioned case also, while considering the scope of Section 87 NI Act, the Supreme Court observed that the party who consents to the alterations as well as the party who has made the alterations are disentitled to complain against such alteration. It was further observed that even if the payee or holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. The Supreme Court went on to observe that whether the alteration was made by the drawer himself or with his consent is a disputed question of fact, which needs to be established by adducing evidence during trial.

10. So far as the contention raised on behalf of the petitioners, that initially on presentation, the cheque in question was encashed and the amount was credited and as such no offence under Section 138 NI Act is made out, is concerned, the same is found fallacious and therefore

rejected. The complainant has alleged that initially when the cheque in question was presented, the amount was credited to his account. However, in pursuance of an email dated 12.03.2020 sent by petitioner No. 1 to the Bank threatening legal action and a further police complaint, the transaction entry was reversed in favour of the petitioners and money was debited from the complainant's account with the net effect that the amount under the cheque remained unpaid. On demand being made through legal notice as well, the petitioners failed to make the payment in the requisite time. In these facts and circumstances, this Court is of the opinion that the ingredients of the offence under Section 138 NI Act are made out.

11. Coming to the last contention raised on behalf of the petitioners that no proceedings are maintainable against petitioner No. 1 as he is not a signatory to the cheque in question and the complaint lacks material particulars, it is worthwhile to note that initially, it was petitioner No. 1 who had entered into the lease agreement with the complainant in pursuance of which the cheque in question was handed over. The cheque was issued from an account that was jointly held by both the petitioners. As per the complainant's stance, it was petitioner No. 1 who had re-handed over the altered cheque signed by petitioner No. 2. In the complaint, it has been stated that all the dealings had taken place with petitioner No. 1. In view of the above, I find no merit in the contention and the same is rejected.

12. Consequently, the impugned order is upheld and the petition is dismissed.

13. A copy of this order be communicated electronically to the concerned Trial Court.

14. Needless to state that the observations made hereinabove are only for the purpose of deciding the present petition and shall not affect the merits of the case in the trial.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 25, 2021

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