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

\+   **CRL.M.C. 2371/2021**

Date of Decision : 30.09.2021

IN THE MATTER OF:

SH. SACHIN J. NADIG ..... Petitioner

Through: Mr. Rajesh Inamdar, Mr. Amit Pai, Mr. Shane Santos and Ms. Smita Pandey, Advocates.

versus

DENTSPLY INDIA PRIVATE LIMITED ..... Respondent

Through: Mr. Vishwendra Verma, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL).

CRL.M.A. 15683/2021 (Exemption)

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

CRL.M.C. 2371/2021 & CRL.M.A. 15682/2021 (Interim Stay)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of the proceedings arising out of Complaint Case No. 8452/2017 filed under Section 138 N.I. Act read with Section 142 N.I. Act, pending before the learned Metropolitan Magistrate-03, Patiala House Courts, New Delhi, and the consequential orders.

2. Learned counsel for the petitioner submits that in the present case the petitioner had issued the cheque in question for Rs.5,02,316/- towards the outstanding liability. He further submits that on receipt of the legal notice dated 12.05.2017, which was received on 20.05.2017, the petitioner, within the stipulated period of 15 days, had made the aforesaid payment by way of NEFT transfer on 03.06.2017. He thus submits that the entire debt has been cleared and there was no occasion for the respondent to file a complaint under Sections 138/142 N.I. Act. It is also submitted that the complaint case is not maintainable as the ingredients of the offence under Section 138 N.I. Act are not made out.

3. Mr. Vishwendra Verma, Advocate appears on behalf of the respondent on advance notice and submits that the petitioner has filed the present petition with *mala fide* intention. He further submits that as in 2016, the petitioner was in total debt of Rs.10,61,952/-. He further submits that the legal notice was issued on 12.05.2017 which was received by the petitioner on 15.05.2017. He also submits that the NEFT transfer of Rs.5,02,316/- made by the petitioner was not within 15 days period of the demand and further the same was not in any way towards the clearance of the debt in the present case. Lastly, it is submitted that bailable warrants were issued against the petitioner vide order dated 26.03.2021 passed by the learned Metropolitan Magistrate.

4. I have heard the learned counsels for the parties and perused the materials on record.

5. The fact situation as it emerges from a perusal of the averments made in the petition and the submissions made by learned counsels for the parties is that the petitioner is a proprietor of *M/s Pujas Enterprises, Hubli, Karnataka,* who in course of dealing on behalf of the company, was having regular business transactions from 2009 to 2015 with the respondent, a company involved in the

business of manufacturing, marketing and selling of various dental equipment and its parts.

6. As per the complaint filed by the respondent, the petitioner had issued the cheque in question in order to discharge its legally payable debt/liability towards the respondent for the goods supplied by it to the petitioner from time to time. On presentation, the cheque was dishonoured and returned with the remarks 'exceeds arrangement'. The petitioner was informed but he failed to take any positive steps. Thus, a legal notice dated 12.05.2017 was issued calling upon him to make the payment of the outstanding cheque amount within 15 days of receipt of the notice. As the petitioner failed to make the outstanding payment, the aforementioned complaint case was filed before the concerned Court.

7. Learned counsel for the respondent has made two-fold submissions –(i) that the NEFT transfer of Rs.5,02,316/- made by the petitioner was beyond the period of 15 days from the date of receipt/service of notice and (ii) that even otherwise, the NEFT transfer was not towards the outstanding cheque amount but towards other liability, the total liability being more than double of the cheque amount i.e., Rs.10,61,952/-.

8. A perusal of the documents filed along with the petition would show that in relation to the receipt of legal notice dated 12.05.2017, a 'track consignment' Report of the Department of Posts, Ministry of Communications, Government of India, has been placed on record. The same shows that an attempt to deliver the item (i.e., the notice) was made on 15.05.2017 but the item was 'delivered' on 20.05.2017.

9. It has been averred on behalf of the petitioner that he had made an NEFT transfer of Rs.5,02,316/- on 03.06.2017 and in this regard, on the same date, also

sent an email addressed to one *Nagarajan K.,* the contents of which are extracted below:

"Dear Sir,

Made NEFT for Rs. 5,02,316/- wit ref no. P17060390045705.

Kindly Acknowledge.

Regards

Pujas Enterprises

Sachin J.Nadig

HUBLI."

10. The above email is the only communication stated to be addressed by the petitioner to the respondent in respect of the NEFT transfer. On a *prima facie* view, a reading of this email does not lend support to the petitioner's claim that the NEFT transfer was made towards the outstanding cheque amount.

11. From the above, it is apparent that the position of the parties remains disputed on facts of the case. The issue as to whether this Court can enter into disputed questions of facts, while exercising powers under Section 482 Cr.P.C., is no longer *res integra.* The Supreme Court in <u>State Farm Corpn. of India Ltd. *v.* Nijjer Agro Foods Ltd. and Others</u> reported as **(2005) 12 SCC 502** has taken the following view in respect of exercise of power under Section 482 Cr.P.C. by High Courts when there are disputed questions of fact involved:-

> *"3. Though, at this stage, we are not going into the merits, but we may only note that the subject-matter of the two complaints are four cheques in all amounting to Rs 76,55,917.47p. According to the respondents, they made payment of Rs 40 lakhs by six bank drafts after the issue of some of the cheques. <u>Whether the said payment has been made or it is towards some of the</u>*

amounts covered by the cheques are all the questions which can be decided only at the trial of the complaint cases under Section 138 of the Negotiable Instruments Act and could not have been made the basis of allowing the revision petition. The approach of the High Court is clearly erroneous."

(emphasis added)

12. Similar view has been taken in S. Krishnamoorthy *v.* Chellammal reported as **(2015) 14 SCC 559,** where the Supreme Court held that when there are disputed questions of facts involved, the same would be a matter of trial and cannot be decided in the proceedings under Section 482 Cr.P.C. Relevant extract from the decision is reproduced hereunder:-

"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[2], 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."

(emphasis added)

13. On a perusal of the aforesaid decisions, this Court is of the view that while exercising its power under Section 482 Cr.P.C., it would be expedient for the Court to not go into the disputed questions of fact, the same being a matter of trial.

14. In consideration of the aforesaid enunciation of law, the present petition is dismissed, being devoid of any merits.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 30, 2021

Click here to check corrigendum, if any