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

% **Pronounced on: 26th May, 2022**

\+ **CRL.M.C. 2073/2022, CRL.M.A. 8771/2022**

RAJEEV RANJAN SINHA ..... Petitioner
Through Mr. Siddharth Dutta and Ms.Gunjan Malhotra, Advocates

versus

SUSHIL KUMAR SAXENA & ORS. ..... Respondents
Through Ms.Manjeet Arya, APP for respondent No.3/State

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") seeking the quashing of the summoning order dated 18th November, 2021, passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi (for short, "**learned Trial Court**") in Complaint Case No.9486/2018 filed by the respondents No.1 and 2 against the petitioner under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, the "**N.I. Act**").

2. It may be noted, at this juncture, that the order impugned is not the summoning order. Rather, it is the order dismissing the application of the petitioner seeking discharge, which is dated 18th November, 2021 and has been placed on the record as Annexure P-15 at pages 77-78 of the E-file.

The summoning order is dated 21st July, 2012 and has been placed on the record as Annexure P-10.

3. The complaint was filed when the cheque dated 18th May, 2012 issued by the petitioner for a sum of Rs.24 lakhs, drawn on Indian Overseas Bank, Institutional Area, Secto-62, Noida, Uttar Pradesh, was dishonoured. After the learned Trial Court had summoned the accused/petitioner to face trial for the offence under Section 138 of the N.I.Act, a petition under Section 482 Cr.P.C. was filed challenging the summoning order, which was disposed of vide orders dated 8th May, 2014 by a Co-ordinate Bench of this Court, permitting the petitioner to raise all issues before the learned Trial Court before the Notice under Section 251 Cr.P.C. was served on the petitioner. It appears that thereafter, the petitioner moved an application *"for recall of the summoning order/discharge of the accused"*, copy of which has been placed on the record as Annexure P-14, raising several issues, which have been repeated in the present petition.

4. In brief, the stand taken by the petitioner before the learned Trial Court was that several cheques of the petitioner had gone missing/stolen, which were the very cheques that the complainant was relying on and misusing to file the instant complaint. In fact, the petitioner had also filed an affidavit and a complaint before the Mumbai Police on 10th February, 2012 about his signed and unsigned cheques going missing. Once such a report was registered, then no provisions of the N. I. Act could be attracted. It was further submitted that the complainant and the accused were co-brothers as they married two sisters and the petitioner had tendered his

resignation on 27th January, 2012, whereafter the cheques signed by him were not destroyed and were misused. He had also alerted the Bank not to honour cheques in respect of Account No.171902000000189. Further, the petitioner was not the Director of the company at the time of the commission of the offence and was therefore not liable, and reliance has been placed on the decision in ***DCM Financial Services Limited v. J N Sareen*** (2008) 8 SCC 1.

5. Mr. Siddharth Dutta, learned counsel for the petitioner, has urged these very grounds submitting that the entire case was *mala fide* and was stage-managed against the petitioner and that in actual fact, the Director was the daughter of the complainant, who ought to have been impleaded in this case instead of the petitioner. Reliance has been placed on the decision of the Supreme Court in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*** (2007) 4 SCC 70 and the judgment of a Co-ordinate Bench of this Court in ***Shivom Minerals Limited v. State of Ors.,*** 2019 SCC OnLine Del 9329 to contend that since there were no specific averments against the petitioner in the complaint, the petitioner ought to be discharged.

6. Since this is a case where, while disposing of a petition under Section 482 Cr.P.C. against the summoning orders on the very same grounds was disposed of by a co-ordinate Bench of this Court, permitting him to raise these grounds before the learned Trial Court, all that this Court can now consider is whether the conclusions drawn by the learned Trial Court are in any way perverse, misplaced or based on no material.

7. A perusal of the impugned order would reveal it to be a well-reasoned one. The judgments relied upon and cited by the learned counsel for the petitioner have been duly considered. In respect of the contention that there was no averment in the complaint against the petitioner, the learned Trial Court has clearly referred to para No.4 thereof, to note that the 'post-dated cheque' was issued towards consultancy fees and was duly signed by the accused No.2, who is the petitioner before this Court. The judgment in ***SMS pharmaceuticals (supra)*** itself has made the signatory of the cheque responsible under Section 141(2) of the N.I. Act. There is no error in the recording of the fact position, as is evident from the copy of the complaint placed on the record as Annexure P-9, (at page 42, para No.4). Nor is there an error in the application of the law. Therefore, the conclusion that the petitioner herein cannot be discharged is sound.

8. With regard to the other argument that the petitioner has already resigned or that the cheques were lost from his possession, these were rightly held by the learned Trial Court to be the defence of the petitioner to be established by him. Even before this Court, the petitioner relies only on his resignation letter, which has been generally addressed to the Board of Directors, with copies to another Director, the Registrar of Companies (ROC) and the Chartered Accountant. But, there is nothing to show that this was accepted by the Board of Directors and the necessary corrections carried out in the records of the ROC. Of course, the petitioner would have an opportunity to establish all these facts before the learned Trial Court.

9. As regards the plea that the cheque had been reported 'lost', it is for the petitioner to prove the same. He would also get an opportunity to cross-

examine the Bank officials to establish that they had an obligation to have refused honouring the cheque on the ground that the cheque has been reported 'lost' by the drawer, to get the benefit of the judgment in ***Raj Kumar Khurana v. State of (NCT of Delhi) and Another*** (2009) 6 SCC 72. The learned Trial Court was therefore, right in holding that the loss of the cheque can be ascertained only during the course of trial.

10. There being no error or perversity in the impugned order, no interference is called for by this Court in exercise of its inherent powers under Section 482 Cr.P.C. Accordingly, the petition is dismissed, along with the pending application. It is made clear that nothing contained in this judgment shall be construed as an expression on the merits of this case, which the learned Trial Court shall determine as per law, after due trial.

11. The petition is accordingly disposed of.

12. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 26, 2022
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