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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 2496/2022, CRL.M.A. 10431/2022

M/S BHAGWATI AIR EXPRESS PVT. LTD. Petitioner

Through: Mr. Rishabh Dua, Adv. along
with AR Mr. Godhan Ram Arya.

Versus

BALAKRISHNAN SHIVRAM IYER & ANR.. Respondents

Through: Ms. Swadha Gupta, Adv. for R-
2.

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Date of Decision: 8th December, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed under section 482 Cr.P.C. for quashing of pre-summoning order dated 25.10.2021 passed by learned MM, South West, Dwarka Courts in CC NI Act 20381 of 2021.
2. Facts in brief are that in November 2021, the petitioner/company was served with a copy of the complaint filed by Respondent no.

3/complainant under Section 138 of the Negotiable Instruments Act, 1881. It was alleged that Respondent no. 2 while purported to be acting in the capacity of Executive Director of the petitioner/company approached Respondent no. 3/complainant and offered the position of “Business Associate”. Respondent no. 2 assured a return on investment upon depositing a refundable security amount. On this offer of Respondent no. 2, Respondent no. 3/complainant along with the other related “Business Associates” deposited a total sum of Rs. 7,90,00,000/- (Rupees Seven Crore Ninety Lakhs only) as a security deposit. Thereafter, a Cheque bearing no. 144086 dated 28.12.2020 drawn on Indusland bank for a sum of Rs. 15,00,000/- was issued by respondent no. 2 but the said cheque was returned with the remark “funds insufficient” vide return memo dated 01.01.2021. Thereafter, Respondent no. 3/complainant upon the request of Respondent no. 2 deposited the cheque again on 22.03.2021, however, the said cheque was again dishonoured. Accordingly, the compliant case bearing CC NI Act/ 20391/2021 was filed.

3. Learned MM (NI Act), South West, Dwarka Courts prima facie opined that sufficient material exists to proceed with the matter and accordingly took cognizance of the offence u/s 138 NI Act, 1881 on basis that the Respondent No. 2 is the Executive Director of the petitioner/company.
4. It is the case of the petitioner/company that in July 2021, Respondent no. 2 was terminated from the services of petitioner/company and the present cheque has been issued in the personal capacity of Respondent

no. 2. Therefore, the said summoning order against the petitioner/company should not have been passed.

5. *Per contra*, learned counsel for Respondent no. 3/complainant has submitted that Respondent no. 2 is the Executive Director of the petitioner/company He is also a Signatory to the cheque in question. Learned counsel for Respondent no. 3/complainant has invited the attention of the Court to the complaint filed against the petitioner/company. In the complaint, it is specifically mentioned that:

“1. The Complainant herein is a reputable individual maintaining her residence in Delhi whose husband being the General Power of Attorney Holder in the present case is engaged in the business of trading of construction materials and has vast experience in liaising and accounting...

2. It is submitted that the Accused No. 1 is a company engaged in providing logistics solutions in Air Cargo services, delivery, transport and storage in India while the Accused No. 2 is the Executive Director/ VP-Operations of the Accused No. 1 and is engaged in dealing on behalf of and for the Accused No.1 in his aforesaid capacity. It is submitted that the Accused No. 3 and 4 are the directors of the Accused No. 1 Company and handle the everyday functioning of the Accused No. 1...”

6. Section 482 Cr.P.C. presupposes three circumstances under which the inherent jurisdiction may be exercised: (i) to give effect to an order under the (ii) to prevent the abuse of the process of court and (iii) to otherwise secure the ends of justice. It is a settled proposition of law that the inherent jurisdiction of this Court to quash the criminal proceedings under Section 482 Cr.P.C., should be exercised very sparingly and with circumspection and that too in the rarest of rare

cases. Reliance can be placed upon *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, *Jitendra Raghuvanshi v. Babita Raghuvanshi*, (2013) 4 SCC 58 and *Babu Venkatesh and Others vs. State of Karnataka and Another* (2022) 5 SCC 639

7. This Court should be slow to grant the relief of quashing a complaint at a pre-trial stage particularly when the factual controversy is in the realm of possibility. At this stage, the legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves to Court for quashing even before the trial has commenced, the Court's approach should be careful enough not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. It is not disputed that the cheque was issued by respondent No.2, while he was still holding a senior position in petitioner-company.
8. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. The petitioner/company herein has failed to make out case warranting the exercise of this inherent power. I am of the opinion that, it will not be judicious to allow the present petition.

9. In view of the above facts and circumstances the present petition along with pending application stands dismissed.

DINESH KUMAR SHARMA, J

DECEMBER 8, 2022/Pallavi

