

\$~28 &29

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

% ***Date of Decision: 03.02.2023***

+ **CRL.M.C. 765/2023**

DINESH VERMA

..... Petitioner

Through: Mr. Idresh Ahmed, Advocate along
with petitioner in person.

versus

STATE GOVT. OF NCT & ANR.

..... Respondents

Through: Ms. Priyanka Dalal, APP for the
State.
Mr. Rana Ranjit Singh, Mr. Ravish
Singh, Ms. Akanksha Singh, Mr.
Vivek Kumar Singh and Mr. Ashish
Mohan, Advocates for R-2.

+ **CRL.M.C. 766/2023**

DINESH VERMA

..... Petitioner

Through: Mr. Idresh Ahmed, Advocate along
with petitioner in person.

versus

STATE GOVT. OF NCT & ANR.

..... Respondents

Through: Ms. Priyanka Dalal, APP for the
State.
Mr. Rana Ranjit Singh, Mr. Ravish
Singh, Ms. Akanksha Singh, Mr.

Vivek Kumar Singh and Mr. Ashish
Mohan, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR J. (ORAL)

CRL.M.A. 2918/2023 in CRL.M.C. 765/2023

CRL.M.A. 2920/2023 in CRL.M.C. 766/2023

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

CRL.M.C. 765/2023 & CRL.M.A. 2917/2023 (stay)

CRL.M.C. 766/2023 & CRL.M.A. 2919/2023 (stay)

1. The present petitions have been filed by the petitioner under Section 482 Cr.P.C. for quashing of the summoning order dated 15.02.2022 passed by Ld. ACMM, North, Rohini Courts, Delhi, in Complaint Case No. 685/2019 registered under Section 138 N.I. Act and for quashing of the summoning order dated 06.05.2019 passed by Ld. MM (N.I. ACT)-03, Central, Tis Hazari Courts, Delhi, in Complaint Case No. 898/2019 registered under Section 138 N.I. Act and the proceedings emanating therefrom.

2. The complainant/ Respondent No. 2 herein, had instituted a complaint case no. 685/2019 under section 138 of Negotiable Instruments Act, against the petitioner in respect of non-payment against three dishonored cheques

for the amount of Rs. 10,00,000/-, Rs. 4,00,000 and Rs. 9,00,000/- and complaint case no. 898/2019 in respect of non-payment against three dishonored cheques for the amount of Rs. 6,00,000/-, Rs. 4,00,000 and Rs. 12,00,000/-, issued by the petitioner in favour of respondent no. 2.

3. The Metropolitan Magistrate vide order dated 15.02.2022 in complaint case no. 685/2019 and vide order dated 06.05.2019 in complaint case no. 898/2019 issued summons U/s 138 NI Act requiring the petitioner to attend the Court.

4. The petitioner being aggrieved filed the present petitions invoking jurisdiction of this Court U/s 482 Cr.P.C.

5. It has been mainly argued by the Ld. Counsel for the petitioner that the complaint filed by the complainant under Section 138 of Negotiable Instruments Act, against the petitioner is false and frivolous and the same has been made after making forged signatures on the cheques in question. He submits that the cheques in question have been misused by the respondent after stealing them from the petitioner in 2009-2010. Ld. Counsel for the petitioner has confined his submissions to impugned complaint not disclosing the nature of business transactions and thus, he submits that it cannot be assumed that there exists a legally enforceable debt or liability. Lastly, he submits that this petition is filed bonafide, in the interest of justice and without any intentional delay.

Ld. Counsel for the petitioner in support of his contentions has placed reliance on the following judgments:

- *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Other [(1998) 5 SCC 749]*
- *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another [(2005) 8 SCC 89]*
- *Omniplast Private Limited Vs. Standard Chartered Bank and Others [(2015) 15 SCC 693]*
- *Shivom Minerals Limited & Ors. Vs. State & Anr. (Crl. M.C No. 4984/2018, High Court of Delhi)*

6. On the contrary, Learned counsel for the respondent has pointed out that the cheques in question were presented within its validity period, the complainant got the intimation of cheques being dishonored on 13.12.2018 and subsequently, the legal notice was issued on 27.12.2018. He submits that more than 15 days elapsed from the date of receipt of notice, however, the petitioner still failed to make any payment. He further submits that the petitioner knowing well that his cheques will not be honoured by the drawee bank and that there is not sufficient balance in the Bank account, issued the cheques in question. He also submits that the contention of Ld. Counsel for the petitioner regarding cheques being lost in the 2009-2010 seems highly improbable as even if the cheques got lost, the petitioner has neither made any efforts to inform the bank nor has lodged any police complaint hitherto. He further submits that the presumption under Section 139 N.I Act includes a presumption that there exists a legally enforceable debt and liability. It has also been argued by Ld. Counsel for the respondent that the petitioner has failed to give any kind of satisfactory explanation for the inordinate delay in

filing the present petitions and therefore, no case for quashing of the summoning orders is made out.

7. As far as the judgments relied upon by the Ld. Counsel for the petitioner are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments, but with due regard, the same are not applicable to the facts of the present case as from perusal of the summoning orders dated 15.02.2022 and 06.05.2019, it is apparent that while passing these orders, the learned Magistrate has perused the complaints as well as affidavit in evidence filed in support of the complaints and other documents filed on record, and therefore, it cannot be said that the trial court has committed any error while summoning the petitioner in the instant cases.

8. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.PC which have been discussed in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. It is seen in many cases that the petitioners with malafide intention and to prolong the litigation raise false and frivolous pleas and in some cases, the petitioners do have genuine defence, but instead of following due procedure of law, as provided under the N.I. Act and the Cr.PC, and further, by misreading of the provisions, such parties consider that the only option available to them is to approach the High Court and on

this, the High Court is made to step into the shoes of the Metropolitan Magistrate and examine their defence first and exonerate them. The High Court cannot usurp the powers of the Metropolitan Magistrate and entertain a plea of accused, as to why he should not be tried under Section 138 of the N.I. Act. This plea, as to why he should not be tried under Section 138 of the N.I. Act is to be raised by the accused before the Court of the Metropolitan Magistrate under Section 251 of the Cr.PC & under Section 263(g) of the Cr.PC.

9. The offence under Section 138 of the N.I. Act is an offence in the personal nature of the complainant and since it is within the special knowledge of the accused as to why he is not to face trial under section 138 N.I. Act, he alone has to take the plea of defence and the burden cannot be shifted to complainant. There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. If an accused has a defence against dishonour of the cheque in question, it is he alone who knows the defence and responsibility of spelling out this defence to the Court and then proving this defence is on the accused. Once the complainant has brought forward his case by giving his affidavit about the issuance of cheque, dishonour of cheque, issuance of demand notice etc., he can be cross-examined only if the accused makes an application to the Court as to, on what point he wants to cross examine the witness(es) and then only the Court shall recall the witness by recording reasons thereto.

10. Sections 143 and 145 of the N.I. Act were enacted by the Parliament with the aim of expediting trial in such cases. The provisions of summary

trial enable the respondent to lead defence evidence by way of affidavits and documents. Thus, an accused who considers that he has a tenable defence and the case against him was not maintainable, he can enter his plea on the very first day of his appearance and file an affidavit in his defence evidence and if he is so advised, he can also file an application for recalling any of the witnesses for cross-examination on the defence taken by him.

11. In view of the procedure prescribed under the Cr.PC, if the accused appears after service of summons, the learned Metropolitan Magistrate shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.PC and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of N.I. Act for recalling a witness for cross-examination on plea of defence. If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant. Once the summoning orders in all these cases have been issued, it is now the obligation of the accused to take notice under Section 251 of Cr. PC., if not already taken, and enter his/her plea of defence before the concerned Metropolitan Magistrate's Court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witnesses, they should do so before the Court of Metropolitan Magistrate.

12. As far as the contention of the Ld. Counsel for the petitioner that this petition is filed bonafide, in the interest of justice and without intentional delay, no doubt, delay is not always fatal to the case, provided it has been satisfactorily explained, however, in the instant case, the petitioner has miserably failed to give any satisfactory explanation for such delay in filing the present petitions.

13. Ld. Counsel for the petitioner has further contended that the cheques in question got lost and the complainant has misused the said cheques by fraudulently forging signatures on them. In my opinion, even if the petitioner is to be believed that the cheques went missing way back in the year 2009-2010, it is really shocking that he has failed to lodge a single police complaint regarding the same and has remained silent for so many years.

14. Therefore, I find no force in the contentions of the Ld. Counsel for the petitioner and accordingly, the present petitions along with pending applications are dismissed being devoid of any merits.

RAJNISH BHATNAGAR, J

FEBRUARY 3, 2023

P