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

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*Reserved on: 10.07.2023
Pronounced on: 12.10.2023*

+ **W.P. (CRL.) 557/2023 & CRL.M.A. 5086/2023**

SIDDHARTH DUGGAL

..... Petitioner

Through: Mr. Varun Tyagi and Mr.
Bharat Gupta, Advocates
alongwith petitioner

versus

STATE (GOVT, OF NCT OF DELHI)
& ORS.

..... Respondents

Through: Ms. Nandita Rao, ASC for the
State along with Mr. Amit
Peswani and Mr. Saransh,
Advocates
Mr. Naman Joshi, Ms. Ritika
Vohra, Mr. Guneet Sidhu, Mr.
Rohan Agarwal and Mr.
Anirudh Singh, Advocates for
R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C. '), the petitioner seeks following reliefs:



- i. setting aside of order dated 17.10.2019 passed by learned Metropolitan Magistrate-05, Patiala House Courts, Delhi ('*learned Magistrate*') in Complaint Case No. 4157/2016, as well as order dated 23.01.2023 passed by learned Additional Sessions Judge-07, Patiala House Courts, Delhi ('*learned ASJ*') in Criminal Revision Petition No. 106/2020 dismissing the revision petition filed by the petitioner;
 - ii. allowing the application filed by petitioner under Section 243 read with Section 293 of Cr.P.C. read with Section 45 and 73 of Indian Evidence Act, 1872 seeking examination of the cheque in question by Government Scientific Expert and another application seeking summoning of the witnesses as mentioned in the application.
2. The factual background of the present case, in brief, is that respondent no. 2/complainant 'M/s. Rakesh Press' had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 ('*NI Act*') whereby it was stated that the complainant was engaged in the business of printing books, magazines and other periodicals for respondent no. 3/accused i.e. 'M/s. Duggals Print House', a sole proprietorship concern, and as on 02.07.2014, there was an outstanding balance to the tune of Rs.11,08,802/- against respondent no. 3. It was alleged that towards the said liability, the sole proprietor of respondent no. 3 i.e. Mr Siddharth Duggal (petitioner herein) had acknowledged his liability as on 31.03.2016 and letters were also exchanged between the complainant and the accused. Eventually, as alleged, a cheque bearing no. 166360 dated 17.08.2016 of Rs.2,00,000/- drawn on Union Bank of



India, Rajouri Garden branch, New Delhi was issued towards discharge of liability of respondent no. 3 as part-payment and the petitioner had assured respondent no. 2 that he would clear the outstanding dues. However, upon presentation of the cheque, the same had got dishonoured *vide* return memo dated 19.08.2016 with remarks "Account Closed/Transferred To". Thereafter, respondent no. 2 had issued legal notice calling upon the accused persons to make the payment of cheque amount and upon their failure to do so, the present complaint case was filed before Patiala House Courts, New Delhi on 20.10.2016.

3. Pursuant to filing of complaint case, the petitioner was summoned *vide* order dated 20.10.2016, and notice under Section 251 Cr.P.C. was framed against him on 06.03.2018. Thereafter, the complainant/respondent no. 2 was examined and discharged on 02.07.2018 and the statement of petitioner was recorded on 05.07.2018 under Section 313 of Cr.P.C. On 23.07.2018, the petitioner had moved two applications before the learned Magistrate, the first application being filed under Section 243 read with Section 293 of Cr.P.C. read with Section 45/73 of Indian Evidence Act, 1872 for referring the cheque in question to FSL, and second application being for summoning of certain defence witnesses. However, learned Magistrate *vide* order dated 17.10.2019 had dismissed both the applications. The relevant portions of the said order read as under:

"6. Therefore, it is clear from the above discussion that as long as the drawer admits his/her signature on the cheque, other details of the cheque not filled by him or filled by a different ink at a later time would not amount to 'material alternation' and



the cheque would be a valid cheque for the purposes of S. 138 NI Act. In the present case, the signatures of the cheque has never been denied by the accused. In response to Notice u/s 251 CrPC dated 06.03.2018, accused no. 2 has stated that "I have signed the dishonoured cheque in question in the capacity of authorized signatory".

Hence, since the signature is admitted by the accused, no further examination of the cheque by government scientific expert is needed in view of the above discussion. Application seeking examination of cheque by government scientific expert is hereby dismissed.

7. Arguments on another application moved by Ld. Counsel for accused for summoning of witnesses heard. Witness mentioned at serial no. 1 is Director, Forensic Science Laboratory. Since, the application seeking scientific examination of the cheque is dismissed above, examination of this witness is automatically disallowed. No purpose will be served by examination of the witness mentioned at serial no. 2, bank witness as the signature of the cheque has already been admitted by accused no. 2 in response to Notice u/s 251 CrPC dated 06.03.2018, hence, the said witness is disallowed as well. Status of the accused firm has not been in dispute, hence witness mentioned at serial no. 3, VAT department is also disallowed..."

4. Aggrieved by the aforesaid order, the petitioner had preferred a revision petition before the learned ASJ. By way of order dated 23.01.2023, the learned ASJ had also dismissed the revision petition filed by the petitioner on the ground that there was no infirmity in the order of learned Magistrate and that neither the examination of cheque was required as there was no material alteration in the same, nor the witnesses as mentioned in the application were necessary to be called for the adjudication of present case.

5. The present writ petition has been preferred assailing both the aforesaid orders of learned ASJ dated 23.01.2023 and learned Magistrate dated 17.10.2019.



6. The case set out by the petitioner is that upon receiving the summons in the present case, he had appeared before the learned Magistrate and had taken a defense that accused no. 1 i.e. respondent no. 3 was a sole proprietorship concern of his mother and therefore, there was no liability on the part of petitioner. It was also stated that respondent no. 3 in complete discharge of its liability had issued a cheque bearing number 166359 dated 10.07.2014 amounting to Rs.1,50,000/- which had been duly encashed in the year 2014, and along with the said cheque, the present cheque in question had also been issued for security purposes in the month of July, 2014 which had been signed by the petitioner only in the capacity of authorised signatory of respondent no. 3. It was also stated that thereafter, in September, 2014, a partition had taken place in the family of petitioner and the petitioner had ceased to be the authorised representative/signatory of respondent no. 3. It is stated that pursuant to petitioner having cross-examined the authorised representative of complainant and recording of statement of petitioner under Section 313 of Cr.P.C., the petitioner had expressed his intention to lead further evidence and had filed two separate applications for the same before the learned Magistrate i.e. one seeking scientific examination of the cheque in question by a government scientific expert and the other seeking summoning of witnesses. The contention of the petitioner while filing such applications was that the cheque in question was issued in the year July, 2014 only as a security cheque and the same was an undated cheque which had been filled later on by the complainant on 17.08.2016 and forensic examination of the ink used on the cheque



would have revealed that a security cheque issued in the year 2014 was misused by the complainant in the year 2016. To further prove that petitioner was not the proprietor of respondent no. 3, he had filed an application seeking summoning of witnesses wherein he had sought to summon Director, FSL, to prove FSL result of cheque in question; officials from concerned Bank to prove the status and nature of bank account and bank account holder; and officials from VAT department to prove the status of respondent no. 3 i.e. whether it was a sole proprietorship or otherwise and as to who was the sole proprietor of the said firm.

7. Learned counsel for the petitioner argues that the cheque in question was issued by respondent no. 3 which was the sole proprietorship firm of petitioner's mother and though the cheque had been signed by the petitioner herein, the same had been done only in the capacity of authorised signatory of the accused firm, and since he was/is not the proprietor of the accused firm, he is not liable to pay any amount to the complainant. It is also stated that the impugned order passed by learned ASJ suffers from illegality especially on the ground that the learned ASJ wrongly held that the petitioner being authorised signatory of the proprietorship firm would be liable in view of the provisions of Section 141 of NI Act. In this regard, it is argued by learned counsel that Section 141 has no application to a sole proprietorship firm and even the complaint filed by the respondent no. 2 was only under Section 138 of NI Act and not under Section 141. It is stated that the petitioner had already brought to the knowledge of complainant, when he had issued the reply to legal notice, that



petitioner was not the sole proprietor but only an authorised representative of her mother, who was the sole proprietor of the accused no. 1/respondent no. 3.

8. On the other hand, learned counsel for respondent no. 2/complainant submits that the present petition has been filed only to delay the trial of the present case and the petitioner before the learned Magistrate has already admitted the issuance of cheque as well as his signatures on the cheque and, thus, presumption under Section 139 of NI Act has already arisen in favour of the complainant. It is also stated that filling of date on a cheque, as also held by learned ASJ, does not fall within the ambit of material alteration and, thus, no scientific examination of the cheque was required to be carried out. Therefore, it is prayed that present petition be dismissed.

9. This Court has heard arguments addressed by learned counsel for petitioner as well as learned counsels for respondents and the material on record has been perused.

10. With respect to the *first issue*, i.e. whether the application filed under Section 243 read with Section 293 of Cr.P.C. read with Section 45/73 of Indian Evidence Act, 1872 for sending the cheque in question to FSL for ink dating needs to be allowed, this Court notes that the petitioner herein had admitted before the learned Magistrate, at the stage of framing of notice under Section 251 of Cr.P.C. as well as the time of recording of his statement under Section 313 of Cr.P.C., that he had signed the cheque in question. He had also admitted that the name of the payee as well as the amount in figures and words had been filled in his handwriting, however, he had stated that the date on cheque had



not been filled by him. The petitioner had also admitted that there was outstanding liability of about Rs. 4 lacs towards the complainant. In such facts and circumstances, the learned ASJ *vide* impugned order dated 23.01.2023 had observed as under:

11. In *Ravi Chopra Vs. State & Anr. 2008 (102) DRJ 147*, Hon'ble High Court of Delhi has held:

"18. Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and either wholly blank or have written thereon an incomplete negotiable instrument such person thereby gives prima facie authority to the holder thereof to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp. Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incur the responsibility of an endorser. Likewise, Section 86 states that where the holder acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawee are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.



19. The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments. The presumption is of consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. The only exception to this is provided in proviso to Section 118 which reads as under: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

20. A collective reading of the above provisions shows that even under the scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a 'material alteration' for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the marker, that would be a material alteration. Therefore, as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 of NI Act."

12. In the present case, the revisionist had admitted his signatures on the cheque in question and that the particulars have also been filled by him in his own handwriting except the date. Even if, the contention of the revisionist that the date was not filled by him is considered as correct, for the sake of arguments, the same cannot be considered as 'material alteration'. Section 138 NI Act does not contemplate that whenever any cheque is issued then the drawee must fill all the details in the cheque in his own handwriting for its validity u/s 138 NI Act. Even if, the contention of the revisionist is accepted



as regard undated cheque, the same would be covered within the provision of Section 138 NI Act, so long as, the revisionist has admitted his signatures on the cheque. Therefore, the Ld. MM was fully justified in dismissing the application of the revisionist for sending the cheque in question to FSL. I do not find any infirmity in the order of the Ld. MM dismissed the first application of the revisionist...”

11. In this regard, a reference can also be made to the decision of Hon’ble Apex Court in case of *Bir Singh v. Mukesh Kumar*(2019) 4 SCC 197, in which it was held as under:

"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.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

35. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable



Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

12. Though the Hon'ble Apex Court in case of *T.Nagappa v. Y.R. Muralidhar* (2008) 5 SCC 633 had observed that the accused should be given fair trial to lead evidence in his defence, however, it was also categorically held that the Court being the master of the proceedings has to determine as to whether the application of the accused in terms of Section 243 Cr.P.C. is bona fide or not or whether the accused intends to bring on record a relevant material. The facts of the present case are, undoubtedly, differentiable from the facts of the said case. In the present case, not only the signatures had been admitted but even the filling up of name of the payee as well as the amount had been admitted by the petitioner. At the cost of repetition, it is also crucial to note that even the petitioner had admitted that there was an existing liability of about Rs. 4 lacs towards the complainant. The respondent/complainant had also relied upon a letter, which as per the case of complainant, reflects that the petitioner had admitted the existence of liability towards the complainant in the year 2016.

13. Thus, this Court does not find any infirmity with the orders passed by both the Courts below by way of which the application filed by the petitioner under Section 243 read with Section 293 of Cr.P.C. read with Section 45/73 of Indian Evidence Act, 1872 was dismissed. Accordingly, the orders of dismissal of application seeking summoning of Director, FSL also warrants no interference.

14. Needless to say, the issue as to whether the cheque was actually issued in respect of any legally enforceable debt or was a security



cheque which had been misused shall be decided by the learned Trial Court on the basis of material available on record, testimonies of the witnesses and the arguments addressed before it at the final stage of adjudication, as per law.

15. However, as regards the *second issue* i.e. whether the petitioner can be held liable, by virtue of Section 141 of NI Act, even if it is proved that he is not the sole proprietor of the accused firm, this Court finds merit in the argument of learned counsel for petitioner that Section 141 of NI Act has no application to a sole proprietorship firm, and under Section 138 of the Act, no other person except the sole proprietor can be held liable. In this regard, this Court takes note of the observations of Hon'ble Apex Court in case of *Raghu Lakshminarayanan v. Fine Tubes (2007) 5 SCC 103* whereby it was held as under:

“9. The description of the accused in the complaint petition is absolutely vague. A juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. **A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals.** Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a person as a Director must come within the purview of the said description, so far as a firm is



concerned, the same would carry the same meaning as contained in the Partnership Act.

14. We, keeping in view the allegations made in the complaint petition, need not dilate in regard to the definition of a “company” or a “partnership firm” as envisaged under Section 34 of the Companies Act, 1956 and Section 4 of the Partnership Act, 1932 respectively, **but, we may only note that it is trite that a proprietary concern would not answer the description of either a company incorporated under the Companies Act or a firm within the meaning of the provisions of Section 4 of the Partnership Act.”**

(Emphasis supplied)

16. Further, this Court also, in case of *M.M. Lal v. State NCT of Delhi 2012 (4) JCC 284*, had expressed as under:

“4. It is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus any reference to sole proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the ambit and scope of Section 141 of the Act, which envisages that if the person committing an offence under Section 138 is a company, every person who, at the time of offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Company includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of partnership firm or association of individual. Vicarious liability cannot be fastened on the employees of a sole partnership firm, by taking aid of Section 141 of the Act, inasmuch as, no evidence has been led to show that the business was run by the respondent no. 2...”

(Emphasis supplied)

17. Thus, a perusal of the aforesaid judicial precedents makes it clear that is only the sole proprietor who can be held liable under Section 138 of NI Act for dishonour of a cheque, drawn on the account maintained



by the sole proprietorship firm and any other person cannot be held vicariously liable inasmuch as Section 141 of NI Act has no applicability in cases of sole proprietorship.

18. Therefore, the observations of the learned ASJ to the extent that two out of three witness as mentioned in the second application filed by the petitioner, i.e. the concerned bank official and the official from VAT department to prove that the firm in question was a sole proprietorship firm, were not required to be called for examination since the petitioner being its authorized representative would be liable under Section 141 of NI Act, are set aside, being contrary to the settled law.

19. In this Court's opinion, the petitioner should not be denied an opportunity during the course of trial to examine witnesses in defence to prove the status of proprietorship firm and as to who was the sole proprietor of the firm and in whose name was the bank account maintained. In view of the same, this Court is of the opinion that the application seeking summoning of defence witnesses, i.e. concerned bank official and the official from VAT department, filed by the petitioner ought to be allowed.

20. Accordingly, the learned Magistrate shall pass an order for summoning of the abovesaid two witnesses as mentioned in application filed by the petitioner before it.

21. It is, however, clarified that the observations made hereinabove shall have no bearing on the merits of the case during the trial and the learned Magistrate shall consider the evidence and arguments addressed before it by both the parties in accordance with law.



22. In view of above terms, the present petition stands disposed of, alongwith pending application.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 12, 2023/