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

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Reserved on: 22.09.2023
Pronounced on: 26.09.2023

+ **CRL.M.C. 831/2020 & CRL.M.A. 3401/2020 & CRL.M.A. 47/2022**

GSM ENGINEERING COMPANY Petitioner

Through: Mr. Deepak Kohli and Ms.
Gurmeet Kaur Kapur,
Advocates

versus

PARAMOUNT COMMUNICATIONS LTD. Respondent

Through: Mr. Mayank Bughani,
Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition is filed on behalf of petitioner under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') assailing summoning order dated 25.09.2019 passed by learned Metropolitan Magistrate, Patiala House Courts, Delhi in Complaint Case bearing no. 13531/2019 titled as 'Paramount Communications Ltd. vs GSM Engineering Company', filed under Section 138 of Negotiable Instruments Act, 1881 ('NI Act').



2. Brief facts of the case, as per complaint under Section 138 of NI Act, are that complainant/respondent i.e. Paramount Communications Ltd. is a company engaged in business of manufacturing and sales of cable and the accused/petitioner i.e. GSM Engineering Company is a proprietorship concern managed by the sole proprietor namely Harmeet Singh Kochhar. During the course of business, accused had approached the complainant for supply of cables, and the complainant had time and again supplied material to the accused against appropriate invoices. It was stated that as on 07.05.2019, a sum of Rs.23,35,736/- was due and payable by the accused and thus, the accused/petitioner had issued a cheque bearing no. 313217, dated 07.05.2019, amounting to Rs.23,35,736/- drawn on Canara Bank, Delhi in favour of complainant. However, when the complainant had presented the said cheque for encashment with its bank, the same had got dishonored *vide* return memo dated 13.05.2019 for the reasons 'Kindly Contact Drawer'. Thereafter, the accused had assured the complainant that the said cheque would be honoured upon subsequent presentation, however, when the cheque was again presented, it had got dishonored for the same reason i.e. 'Kindly Contact Drawer'. The complainant had then issued a statutory legal notice of demand dated 23.08.2019 calling upon the accused to make payment within 15 days, but the accused had failed to do so. Accordingly, the present complaint under Section 138 of NI Act was filed by the complainant, and the learned Trial Court had issued summons against petitioner/accused *vide* order dated 25.09.2019.



3. Learned counsel for the petitioner states that the complainant has filed a false and fabricated ledger by manipulating various entries and by not giving proper credit of the payments made by the petitioner. It is stated that on 12.05.2014, the petitioner had transferred a sum of Rs. 30,00,000/- to the complainant and the same is reflected in the complainant's ledger but by fabricating the ledger, the complainant had shown a debit entry of the same amount. It is stated that complainant has filed the present complaint for full amount i.e. Rs.23,35,736/- without adjusting the payments made by the petitioner to the complainant before presentation of cheque and as on date of presentation of cheque, the amount due even as per complainant's ledger was Rs.19,43,826/-, which is much less than the cheque amount, and thus, it cannot be said to be valid complaint. It is argued that complainant had misused the security cheque given by the petitioner some years back by filling the particulars in it at a later stage. Thus, it is stated that present petition be allowed.

4. Learned counsel for respondent, on the other hand, vehemently opposes the present petition and states that the sole ground for petitioner to have obtained *ex-parte* interim stay of trial court proceedings on 14.02.2020 was that as per the ledger filed with the complaint under Section 138 of NI Act, the amount alleged to be due was less than the amount mentioned on the dishonored cheque, however, the petitioner had deliberately filed incomplete ledger before this Court and suppressed the complete ledger, and a perusal of the complete ledger demonstrates that the total amount due as per the ledger filed before the learned Trial Court is Rs.48.98 lakhs. It is



argued that the contentions raised before this Court regarding ledger filed by the complainant alongwith the complaint before learned Trial Court being false and fabricated, or that the cheque in question being issued as a security cheque, are all issues which can only be adjudicated upon during the course of trial. It is stated that *prima facie* case under Section 138 of NI Act exists against the petitioner, and thus, present petition ought to be dismissed.

5. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.

6. The operative portion of impugned summoning order dated 25.09.2019 passed by the learned Trial Court, by way of which the petitioner was summoned in CC No. 13531/2019, reads as under:

“...I have heard arguments on point of summoning and perused the complaint, evidence byway of affidavit, bank memo, cheque, demand notice and other documents on record. Prima facie the complaint is within limitation. In view of the averments made in the complaint, this Court has territorial jurisdiction to entertain this complaint. No other offence other than Section 138 of NI Act is made out against the accused person(s).

Perusal of the record shows that the accused Harmeet Singh Kochhar is the proprietor of GSM Engineering Company. The cheque also bears the signatures of the accused Harmeet Singh Kochhar.

Let summons be issued to accused Harmeet Singh Kochhar, proprietor of GSM Engineering Company at the given address(es) on filing of PF within 10days, returnable on 28.01.2020. Summons be issued positively within 15 days from receipt of PF. Non-compliance will be viewed strictly.”

7. The Hon'ble Apex Court in *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel*(2023) 1 SCC 578, has held that to



constitute an offence under Section 138 of NI Act, following ingredients are to be fulfilled:

“11. Section 138 of the Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

(i) A cheque drawn for the payment of any amount of money to another person;

(ii) **The cheque is drawn for the discharge of the ‘whole or part’ of any debt or other liability. ‘Debt or other liability’ means legally enforceable debt or other liability;** and

(iii) The cheque is returned by the bank unpaid because of insufficient funds.

However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:

(i) The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;

(ii) The holder of the cheque must make a demand for the payment of the ‘said amount of money’ by giving a notice in writing to the drawer of the cheque within thirty days from the receipt of the notice from the bank that the cheque was returned dishonoured; and

(iii) The holder of the cheque fails to make the payment of the ‘said amount of money’ within fifteen days from the receipt of the notice...”

8. The controversy in the present case revolves around the issue as to what was the actual amount due and payable on the part of petitioner/accused towards the complainant/respondent, and as to whether the amount due as on date of presentation of cheque for encashment and its subsequent dishonoring was less than the amount of cheque in question. Thus, all the arguments revolve around the *prima facie* fulfillment of essential (ii) of a case under Section 138 of



NI Act i.e. “the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability”.

9. The case set out by the petitioner is that the maximum amount due even as per the ledger maintained by the complainant, as on date of presentation of cheque, was Rs.19,43,826/- and the cheque in question amounts to Rs.23,35,736/- and thus, there was no legally enforceable debt for which the cheque in question was deposited, that too without an endorsement since the petitioner had already made some part payments before the date of dishonor of cheque. On the other hand, the case of complainant is that the petitioner herein had not filed the complete ledger which had been filed by the complainant before the learned Trial Court, which clearly shows that the total amount due from the petitioner was Rs.48.98 lakhs and the amount of cheque was much less than the existing legally enforceable debt.

10. In these facts and circumstances, both the parties have assailed the genuineness of ledgers maintained by each party during the normal course of business. The complete ledger, being Exhibit CW-1/4 in CC No. 13531/2019, filed by respondent alongwith the reply to the present petition, shows that the total amount due and payable by petitioner towards respondent was Rs.19,43,826 + Rs.2954,706, which amounts to a total of Rs.48,98,532/-. The petitioner, however, argued that the last page of this ledger is false and fabricated.

11. At this stage, when only the summons have been issued by the learned Trial Court against the petitioner on the basis of perusal of complaint under Section 138 of NI Act, supporting documents filed



thereof and the pre-summoning evidence tendered by the complainant, and when the documents filed by the complainant *prima facie* show that the cheque in question was issued by the petitioner towards discharge of existing debt, this Court is of the opinion that contentions raised before this Court regarding one page of ledger being false and fabricated and the question of actual liability existing on the date of dishonor of cheque being different or not, can only be decided during the course of trial on the basis of evidence to be brought on record to support such rival claims and on touchstone of examination and cross-examination of witnesses. This Court, by exercising its powers under Section 482 of Cr.P.C. cannot conduct an enquiry into the genuineness of any document filed alongwith the complaint before the learned Trial Court. Further, the petitioner as such has not disputed the issuance of cheque in question, and the defence of cheque being issued for security purposes or not in the past can also be appreciated only during the course of trial.

12. In this background, this Court deems it apposite to refer to the decision of Hon'ble Apex Court in *Rathish Babu Unnikrishnan v. State (NCT of Delhi)* 2022 SCC OnLine SC 513, wherein while examining as to whether or not the contention that a cheque was issued as security and not in discharge of legally recoverable debt is sufficient to quash proceedings at pre-trial stage, it was held that it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the Trial Court to evaluate the evidence of the parties. The relevant observations of Hon'ble Apex Court are reproduced as under:



“6. As noted earlier, the appellant's basic contention is that the cheque in question was not issued in discharge of “legally recoverable debt”. They also raised a contention on the obligation of the complainant to transfer the concerned shares. A defence plea is raised by the appellant to the effect that the cheques in question were issued as “security” and not in discharge of any “legally recoverable debt”.

7. The learned Judge of the Delhi High Court while considering the petition under Section 482 Cr.P.C kept in mind the scope of limited enquiry in this jurisdiction by referring to the ratio in *HMT Watches Limited v. M.A. Abida*¹. and in *Rajiv Thapar v. Madan Lal Kapoor*² and opined that the exercise of powers by the High Court under Section 482 Cr.P.C, would negate the complainant's case without allowing the complainant to lead evidence. Such a determination should necessarily not be rendered by a Court not conducting the trial. Therefore, unless the Court is fully satisfied that the material produced would irrefutably rule out the charges and such materials being of sterling and impeccable quality, the invocation of Section 482 Cr.P.C power to quash the criminal proceedings, would be unmerited. Proceeding on this basis, verdict was given against the appellant, who was facing the proceeding under Section 138 of the N.I. Act. With all liberty given to the appellant to raise his defence in the trial court, his quashing petition came to be dismissed.

8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.

10. It is also **relevant to bear in mind that the burden of proving that there is no existing debt or liability, is to be discharged in the trial.** For a two judges Bench in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd.*³, Justice S.N. Variava made the following pertinent observation on this aspect:—

“17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in



the petitions filed by them the High Court could not have concluded that there was no existing debt or liability.”

11. 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 Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The opinion of Justice K.G. Balakrishnan for a three judges Bench in *Rangappa v. Sri Mohan*⁴ would at this stage, deserve our attention:—

“26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

12. At any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence. On this aspect, we may benefit by referring to the ratio in *Rajeshbhai Muljibhai Patel v. State of Gujarat*⁵ where the following pertinent opinion was given by Justice R. Banumathi:—

“22.When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act.”



16. The proposition of law as set out above makes it abundantly clear that the **Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter.** What is also of note is that the **factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations** made in the complaint.

17. 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. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, **to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious.** Based upon a *prima facie* impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited...”

(emphasis supplied)

13. Thus, in view of the aforesaid observations of the Hon’ble Apex Court, this Court is of the opinion that the issues raised before this Court can only be decided by the learned Trial Court at appropriate stage, on their own merits. Since a *prima facie* case exists against the petitioner under Section 138 of NI Act, there are no reasons to quash the summoning order dated 25.09.2019.



14. Accordingly, the present petition, alongwith pending applications, stands dismissed.

15. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

16. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 26, 2023/ns