



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

*Reserved on: 18.09.2023**Pronounced on: 17.10.2023*+ **CRL.M.C.1084/2020 & , CRL.M.A. 4286/2020**

ASHISH MEHRA

..... Petitioner

Through: Ms. Arushi Anthwal,
Advocate

versus

M/S. BYWAYS INDIA PVT. LTD

.... Respondent

Through: Mr. Anil Sharma, Advocate

+ **CRL.M.C.1087/2020 & CRL.M.A. 4305/2020**

RAMJI SHARMA

..... Petitioner

Through: Ms. Arushi Anthwal,
Advocate

versus

M/S. BYWAYS INDIA PVT. LTD

..... Respondent

Through: Mr. Anil Sharma, Advocate

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of these petitions filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioners seek quashing of Complaint Case No. 4350/2018, titled 'M/s. Byways India Pvt. Ltd. vs. M/s. Zynke Exports Pvt. Ltd.', pending before the



learned Metropolitan Magistrate, West District, Tis Hazari Courts, New Delhi (*'Trial Court'*).

2. Brief facts of the case, as per the complaint filed under Section 138 of Negotiable Instruments Act, 1881 (*'NI Act'*) are that the complainant i.e. M/s. Byways India Pvt. Ltd., a manufacturer and supplier of woven labels, paper tags, paper stickers and allied products, and the accused no. 1 i.e. M/s. Zynke Exports Pvt. Ltd., engaged in the business of ready-made garments, were having business relations with each other. As stated, the complainant had been supplying the material to the accused since 01.04.2016 on orders being placed by the accused and the accused had always been satisfied from the quality and quantity of the material supplied by the complainant. It was also stated that the complainant had been maintaining the books of accounts in the regular course of business and had been duly crediting the payments made by the accused company in its books of accounts. It was alleged that initially, the accused company had been regular in making the payments against the goods, but eventually, it had started making defaults in payments and as per the books, there was an outstanding amount of Rs.12,78,510/- as on 02.06.2017. The complainant had made several requests to the accused company to make outstanding payments and ultimately had sent a demand notice on 13.04.2018 *vide* which the accused persons were directed to clear the outstanding amount. Thereafter, in the first week of May 2018, accused no. 2 i.e. Ashish Mishra had telephonically contacted the complainant company and had asked the AR of the company to collect the cheque from the



office of accused company. Upon such request, the AR of the complainant company had visited the office of accused where he had met both accused no. 2 i.e. Ashish Mishra and accused no. 3 i.e. Ramji Sharma and the said persons had issued and handed over the cheque bearing number 750468, dated 18.05.2018, drawn on Punjab National Bank, Sector 27, Noida, Uttar Pradesh amounting to Rs.12,52,940/- in discharge of the part liability of the accused company on the assurance that the cheque would be encashed upon its presentation. Thereafter, the complainant had presented the cheque with its banker namely State Bank of India, Mayapuri, New Delhi for encashment on the same day, but to the utter shock and surprise, the cheque in question had got dishonoured *vide* returning memo dated 19.05.2018 for the reasons 'Funds Insufficient'. As alleged, the complainant company had made repeated demands to the accused persons to clear the dues, however, they had failed to do so. Thereafter, the statutory legal demand notice dated 01.06.2018 was served upon the accused persons, but despite the service of notice, they had failed to make the payment. Accordingly, the complainant company had filed the present complaint under Section 138/141 of NI Act against the accused company and its director and additional director/signatory.

3. Learned counsel for the petitioners argues that as per the case of complainant, the cheque in question had been issued on 18.05.2018 and had got dishonoured on 19.05.2018, however, on the date of alleged dishonour i.e. 19.05.2018, some unknown persons had forged the signatures of Ramji Sharma and had perpetrated a



fraud on the company by effectuating certain RTGS transactions due to which the balance of the company's account had reduced and the cheque in question had got dishonoured. It is stated that in this regard, a complaint had also been filed with the police and subsequently upon filing an application under Section 156(3) Cr.P.C., an FIR had also got registered on 06.06.2019. It is stated that at the time of commission of offence, the petitioners were not in-charge of or responsible for the affairs of the accused company since the National Company Law Tribunal had allowed an application under Section 7 of Insolvency Bankruptcy Code, 2016, *vide* order dated 08.06.2018, after which the petitioners had no control over the affairs of the company and the powers of the board of directors had got vested with the interim resolution professional. It is stated that though the cheque had got dishonoured prior to the company going into CIRP, it is stated that the offence under Section 138 of NI Act gets completed only after completion of 15 days from service of legal notice and failure to make payment, which had got completed a week after the accused company going into CIRP. It is argued that as per the judgment of Hon'ble Apex Court in ***P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*** (2021) 6 SCC 258, the word 'proceeding' under Section 14(1)(a) of IBC, 2016 would cover a prosecution under Section 138 of NI Act and thus, present proceedings ought not to be continued. It is also stated that since an FIR had been registered on the complaint of petitioners *qua* fraud that had happened with the accused company on the date of dishonour of cheque, the learned Trial Court ought to have followed



the provision of Section 210 of Cr.P.C. which mandates that when there is a complaint case and police investigation in respect of the same offence pending, the proceedings in complaint case should be stayed. Therefore, it is argued that the present petitions be allowed and the complaint case be quashed.

4. On the other hand, learned counsel for the respondent has argued that there are no reasons to quash the present complaint case. As regards the argument of moratorium under IBC, 2016, it is stated that even as per the decision of *P. Mohanraj (supra)*, only the proceedings against corporate debtor can be stayed and the same does not cover natural persons such as directors of the company. It is also submitted that the contentions raised on behalf of the petitioners regarding stay of proceedings as per Section 210 of Cr.P.C. have already been considered by the learned Trial Court and the application on this aspect stands dismissed by way of a reasoned order. It is also stated that there are specific averments in the complaint against the accused persons/petitioners herein and thus, the present petitions be dismissed.

5. This Court has heard arguments addressed by learned counsel for petitioners as well as learned counsel for respondent and has perused the material placed on record.

6. At the outset, this Court deems it necessary to take note of Section 138 and 141 of NI Act, which read as under:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for



the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless —

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes 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 of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

“141. Offences by companies. — (1) If the person committing an offence under section 138 is a company, every person who, at the time the 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:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or



employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

7. The Hon’ble Apex Court in *S.P. Mani & Mohan Dairy v. Dr. Snehalatha Elangovan* 2022 SCC OnLine SC 1238, while analysing Section 141 of the Act and summarising certain principles, had observed as under:

“26. While the essential element for implicating a person under sub-section (1) is his or her being in charge of and responsible to the company in the conduct of its business at the time of commission of the offence, the emphasis in sub-section (2) is upon the holding of an office and consent, connivance or negligence of such officer irrespective of his or her being or not being actually in charge of and responsible to the company in the conduct of its business. Thus, the important and distinguishing feature in sub-section (1) is the control of a responsible person over the affairs of the company rather than his holding of an office or his designation, while the liability under sub-section (2) arises out of holding an office and consent, connivance or neglect. While all the persons covered by sub-section (1) and subsection (2) are liable to be proceeded against and also punished upon the proof of their being either in charge of and responsible to the company in the conduct of its



business or of their holding of the office and having been guilty of consent, connivance or neglect in the matter of commission of the offence by the company, the person covered by sub-section (1) may, by virtue of the first proviso, escape only punishment if he proves that the offence was committed without his knowledge or despite his due diligence.

33. Thus, the legal principles discernible from the aforesaid decision of this Court may be summarised as under:—

- (a) Vicarious liability can be fastened on those who are in-charge of and responsible to the company or firm for the conduct of its business. For the purpose of Section 141, the firm comes within the ambit of a company;
- (b) It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole;
- (c) If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed in regards the law.
- (d) In construing a complaint a hyper-technical approach should not be adopted so as to quash the same.
- (e) The laudable object of preventing bouncing of cheques and sustaining the credibility of commercial transactions resulting in the enactment of Sections 138 and 141 respectively should be kept in mind by the Court concerned.
- (f) These provisions create a statutory presumption of dishonesty exposing a person to criminal liability if payment is not made within the statutory period even after the issue of notice.
- (g) The power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.
- (h) The Court concerned would owe a duty to discharge the accused if taking everything stated in the complaint is correct and construing the allegations made therein liberally in favour of the complainant, the ingredients of the offence are altogether lacking.

47. Our final conclusions may be summarised as under:—



a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.



d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court...”

8. A perusal of the complaint filed under Section 138 reveals that there are specific averments against the petitioners herein that they were responsible and in-charge of the day-to-day affairs of the accused company, being its director and additional director. It is also specifically averred that petitioner Ashish Mehra had telephonically contacted the complaint company and had asked it to receive the cheque in question towards discharge of liability of the accused company. Thus, there are specific averments to the effect that the petitioners were aware of the issuance of cheque in question and being the directors of the company, were liable for its dishonor. It is also not in dispute that the cheque in question had been signed by petitioner Ramji Sharma, who was the Additional Director of the accused company. As held in catena of judgments by the Hon’ble Supreme Court, the liability of a director who is signatory to the cheque is on higher pedestal than other directors and it need not even be averred in the complaint that the said signatory of cheque was incharge of and responsible for day-to-day affairs of the company, who shall fall under Section 141(2) of NI Act [Ref: ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89, *K.K. Ahuja v. V.K. Vohra* (2009) 10 SCC 48 and *National Small Industries***



Corp. Ltd. v. Harmeet Singh Paintal (2010) 3 SCC 330]. Thus, the averments to be made in relation to Section 138/141 of NI Act are sufficiently reflected in the complaint filed by the complainant company. Moreover, the petitioners herein have neither denied the factum of issuance of cheque in dispute, nor the signatures on the same.

9. As regards the issue of applicability of moratorium as envisaged under IBC, 2016, the same stands settled by a Three-judge bench of Hon'ble Apex Court in *P. Mohanraj* (*supra*) wherein it has been held the proceedings under Section 138/141 of NI Act can be initiated or continued against the directors of accused company, and moratorium under Section 14 of IBC, 2016 and consequent stay on proceedings shall be applicable only to the corporate debtor/accused company. The relevant observations in this regard are as under:

“...Whether natural persons are covered by Section 14 IBC

101. As far as the Directors/persons in management or control of the corporate debtor are concerned, a Section 138/141 proceeding against them cannot be initiated or continued without the corporate debtor – see *Aneeta Hada* (*supra*). This is because Section 141 of the Negotiable Instruments Act speaks of persons in charge of, and responsible to the company for the conduct of the business of the company, as well as the company. The Court, therefore, in *Aneeta Hada* (*supra*) held as under:

“51. We have already opined that the decision in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in *C.V. Parekh* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in *Anil Hada* [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be



prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of *lex non cogit ad impossibilia* gets attracted.”

XXX XXX XXX

“56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term “as well as” in the Section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words “as well as” have to be understood in the context.”

XXX XXX XXX

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself.



We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove.”

102. Since the corporate debtor would be covered by the moratorium provision contained in Section 14 of the IBC, by which continuation of Section 138/141 proceedings against the corporate debtor and initiation of Section 138/141 proceedings against the said debtor during the corporate insolvency resolution process are interdicted, what is stated in paragraphs 51 and 59 in Aneeta Hada (supra) would then become applicable. The legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. **This being the case, it is clear that the moratorium provision contained in Section 14 of the IBC would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act...**”

(emphasis supplied)

10. Reiterating the aforesaid proposition, the Hon’ble Supreme Court in *Nag Leathers Pvt. Ltd. v. Dynamic Marketing Partnership* (2022) 2 SCC 271 had quashed the proceedings against the corporate debtor. The complaint in this case was filed a few months after the CIRP process had already began and it was observed that since the complaint was filed only against the corporate debtor and no natural persons were arrayed as accused, the exception carved out by the



Hon'ble Apex Court in *P. Mohanraj (supra)* of continuation of proceedings against natural persons such as directors of corporate debtor would not be applicable in that case. The said observations read as under:

“7. However, in the instant case, the complaint was filed only against the corporate entity and none of the natural persons who were stated to be the in-charge of and responsible for the affairs of the corporate entity were arrayed as accused.

8. The decision rendered by this Court in *P. Mohanraj (supra)* has since then been followed by another three-Judge Bench of this Court in *Gimpex Private Ltd. v. Manoj Goel*, 2021 SCC Online SC 925 : 2021 (12) SCALE 269.

9. It must therefore be held that the corporate debtor, namely, the appellant herein cannot now be proceeded against under Section 138 of the Act. Consequently, the proceedings initiated against the appellant deserve to be quashed.

10. Since no natural person was arrayed as accused, the exception carved out in the decision of this Court in *P. Mohanraj (supra)* does not arise in the instant case...”

11. Similarly, in *Narinder Garg v. Kotak Mahindra Bank* 2022 SCC OnLine SC 517, a Three-judge bench of Hon'ble Apex Court, while reiterating the principles laid down in *P. Mohanraj (supra)* and refusing to quash proceedings against director of accused company, held as under:

“3. In *P. Mohanraj v. Shah Brothers Ispat Private Limited*, (2021) 6 SCC 258, a Bench of three-Judges of this Court considered the matter whether a corporate entity in respect of which moratorium had become effective could be proceeded against in terms of Sections 138 and 141 of the Negotiable Instruments Act, 1881 (“the Act” for short).

4. A subsidiary issue was also about the liability of natural persons like a Director of the Company. In paragraph 77 of its judgment, this Court observed that the moratorium provisions contained in Section 14 of the Insolvency and Bankruptcy



Code, 2016 would apply only to the corporate debtor and that the natural persons mentioned in Section 141 of the Act would continue to be statutorily liable under the provisions of the Act.

5. It is submitted by Mr. Gopal Sankaranarayanan, learned Senior Advocate that the resolution plan having been accepted in which the dues of the original complainant also figure, the effect of such acceptance would be to obliterate any pending trial under Sections 138 and 141 of the Act.

6. The decision rendered in P. Mohanraj is quite clear on the point and, as such, no interference in this petition is called for.

7. This writ petition is, therefore, dismissed...”

12. In the present case, the cheque was issued by the accused company in favour of complainant, towards the repayment of dues in the normal course of business transactions. The said cheque was handed over to the AR of complainant company by both the petitioners upon assurance that the same would get encashed, and the cheque was signed by the petitioner Ramji Sharma. The cheque upon presentation was dishonoured on 19.05.2018, whereas the application under Section 7 of IBC, 2016 was allowed by the Hon’ble NCLT on 08.06.2018, i.e. subsequent to dishonor of cheque.

13. Thus, in view of the ratio of Hon’ble Supreme Court in *P. Mohanraj (supra)*, reiterated in *Nag Leathers Pvt. Ltd. (supra)* and *Narinder Garg (supra)*, the proceedings under Section 138/141 of NI Act can continue against the directors and persons responsible and incharge of accused company, i.e. the petitioners herein even after moratorium period under Section 14 of IBC, 2016 has commenced.

14. Further, to appreciate the contentions raised on behalf of petitioners regarding invocation of Section 210 of Cr.P.C. in present



case, it shall be appropriate to refer to the said provision, which reads as under:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code...”

15. The relevant portion of order dated 11.02.2020, *vide* which the application filed before the learned Trial Court seeking stay of proceedings as per Section 210 of Cr.P.C. was dismissed, reads as under:

“...Accused no.2/applicant entered his appearance through counsel on 13.11.2018 but the accused no. 2 failed to appear in person on three consecutive hearings i.e. on 13.11.2018, 12.03.2019 and 01.06.2019 and it is only on 22.08.2019 accused no. 2 appeared and sought to explore the possibility of mediation and accordingly matter was referred to mediation but the matter was received as unsettled from mediation centre and it is only thereafter on 24.10.2019 the present application



was moved on behalf of accused no. 2 seeking stay in the present matter. The said FIR as mentioned above in the present application is dated 06.06.2019 is clearly after the filing of present complaint and has been registered on the complaint of accused no.3 Ramji Sharma u/s 406/471/468/467/420 IPC. This court has thoroughly perused the FIR which nowhere mentions about the cheque in question in particular. The said FIR lodged by accused no.3 pertains to different offences of cheating/forgery and is not the subject matter of inquiry/trial in the present complaint. The said FIR is lodged in P.S. Sector-20 Noida which is also not under jurisdiction of this court. So, the subject matter being different in FIR, essential ingredients of Section 210 Cr.PC are not satisfied herein. Also the offence under Section 138 N.I. Act is a special offence different from other offences of IPC the purpose of which is to restore faith in the commercial transactions between the parties. A separate cheating case filed by the accused persons that does not bar the trial of Section 138 N.I. Act which comprises of different ingredients altogether. It appears that the present application has been filed just to delay the proceedings in the present matter and therefore, the same is hereby dismissed...”

16. This Court notes that Section 210 deals with the procedure to be followed by a Magistrate when there is a complaint case and police investigation in progress, in respect of the ‘same offence’, and provides that in such a case, the Magistrate shall stay the proceedings before it. In the case at hand, while the offence alleged in the FIR registered in Noida, Uttar Pradesh on the complaint of petitioner Ramji Sharma relates to forgery, cheating, breach of trust committed by some other persons in relation to some cheques, the present complaint case pertains to offence under Section 138/141 of NI Act for dishonor of cheque in question. Section 210 also provides that if proceedings are stayed, the Magistrate shall call for a report from the concerned police officer about the investigation and if report is made under Section 173 of Cr.P.C., the Court shall inquire



into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. It is crucial to note that no such consequence can ensue in the present case even if proceedings are stayed, since police investigation which has been referred to by petitioners relates to the FIR registered in Noida, U.P. being outside the territorial jurisdiction of the learned Trial Court. Even considering the provisions of Section 210(1) and (2) of Cr.P.C., the concerned police officer of P.S. Noida, Sector 20, can neither file a report under Section 173 Cr.P.C. before the learned Trial Court in Delhi nor can the trial be conducted in Delhi. Thus, the arguments regarding applicability of Section 210 of Cr.P.C. are bereft of any merit.

17. However, it is also clarified that pursuant to conduct of investigation in the aforesaid FIR and trial if any, if any crucial fact qua the financial capacity or the balance in bank accounts of the accused company emerges, the petitioners shall be at liberty to bring the same to the knowledge of the learned Trial Court during the course of trial/arguments and the Court shall consider the same as per law.

18. Thus, in view of foregoing discussion, this Court finds no reasons to quash the present proceedings under Section 138/141 of NI Act.

19. Accordingly, the present petitions alongwith pending applications, if any, stand dismissed.

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



21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 17, 2023/zp