



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

% ***Date of decision: 25.05.2023***

+ **CRL.M.C. 3888/2023**

ASHOK AGGARWAL Petitioner

Through: Mr. Rabindra Singh, Mr. Paras Aggarwal, Mr. Asif Ali and Ms. Ekta Singh, Advocates.

versus

M/S SESAME FOODS PVT LTD Respondent

Through: Mr. Aman Shankar, Advocate
(through VC)

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ASHOK AGGARWAL Petitioner

Through: Mr. Rabindra Singh, Mr. Paras Aggarwal, Mr. Asif Ali and Ms. Ekta Singh, Advocates.

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(through VC)



CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

CRL.M.A. 14605/2023 & CRL.M.A. 14606/2023 (Exemptions) in
CRL.M.C. 3888/2023
CRL.M.A. 14607/2023 & CRL.M.A. 14608/2023(Exemptions) in
CRL.M.C. 3889/2023

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

CRL.M.C. 3888/2023 & CRL.M.A. 14645/2023
CRL.M.C. 3889/2023 & CRL.M.A. 14609/2023

1. The present petitions have been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of the order dated 25.07.2019 and notice dated 03.03.2023 arising out of Complaint Case No. 344/2019 registered under Section 138 N.I. Act and for quashing of the order dated 14.02.2020 and notice dated 14.10.2022 arising out of Complaint Case No. 12459/2018 registered under Section 138 N.I. Act, and the proceedings emanating therefrom.

2. The complainant/ Respondent herein, had instituted a complaint case no. 344/2019 under section 138 of Negotiable Instruments Act, 1881 against the petitioner in respect of non-payment against two dishonored cheques for the amount of Rs. 39,21,652/- and Rs. 34,90,696/- and complaint case no. 12459/2018 under section 138 of Negotiable Instruments Act, 1881 in respect of non-payment against one dishonored cheque for the amount of Rs. 25,00,000/-, issued by the petitioner in favour of respondent.



3. The Metropolitan Magistrate vide order dated 25.07.2019 in Complaint Case no. 344/2019 and vide order dated 14.02.2020 in Complaint Case no. 12459/2018 issued summons under Section 138 N.I. 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 impugned cheques were issued blank to the respondent for the purpose of security in lieu of MOU dated 27.04.2014 executed between the parties, subject to adjustment of final outcome from the Service tax department and from Govt. of Rajasthan etc., and not in discharge of any existing legally recoverable debt or liability as alleged by the respondent. He further submitted that the respondent has been paid excess amount in terms of the agreement dated 16.08.2013 coupled with MOU dated 27.04.2014 and it is the respondent who owes money to the accused firm. He further submitted that the respondent has misused the impugned cheques in breach of mutual trust between the parties and the proceedings under Section 138 N.I. Act have been initiated by the respondent as a blackmailing tactic to extort money from the petitioner and the accused firm. He further submitted that the complaints lacks necessary, sufficient and specific allegations qua the petitioner worth taking cognizance of the complaints and further, the summoning orders dated 25.07.2019 and 14.02.2020 are nonspeaking orders. He submitted that the impugned complaints don't make out a case of



vicarious liability under Section 138 N.I. Act against the petitioner in view of the insufficient allegations and thus, it cannot be assumed that there exists a legally enforceable debt or liability.

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 11.05.2018 and 25.10.2018 and subsequently, the legal notice was issued on 11.05.2018 in complaint case no. 12459/2018 and on 19.11.2018 in complaint case no. 344/2019. He submitted that more than 15 days elapsed from the date of receipt of notice, however, the petitioner still failed to make any payment. He further submitted 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 further submitted that the contention of Ld. Counsel for the petitioner that he issued blank cheques to the respondent for the purpose of security is baseless and without any merit. He further submitted that the presumption under Section 139 N.I. Act includes a presumption that there exists a legally enforceable debt and liability, and therefore, no case for quashing of the summoning orders is made out.

7. 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 and 263(g) of the Cr.PC.

8. An offence under Section 138 of the NI Act is technical in nature and defences, which an accused can take, are inbuilt; for instance, the cheque was given without consideration, the accused was not a Director at that time, accused was a sleeping partner or a sleeping Director, cheque was given as a security etc., however, the onus of proving these defences is on the accused alone, in view of Section 106 of the Indian Evidence Act, 1872. Since the mandate of the legislature is the trial of such cases in a summary manner, the evidence already given by the complainant by way of affidavit is sufficient proof of the offence and this evidence is not required to be given again in terms of section 145(1) of the N.I. Act and has to be read during the trial.



The witnesses i.e. the complainant or other witnesses can be recalled only when the accused makes such an application and this application must disclose the reason why the accused wants to recall the witnesses and on what point the witnesses are to be cross examined.

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. The parameters of the jurisdiction of the High Court, in exercising jurisdiction under Section 482 Cr.PC, are now almost well-settled. Although it has wide amplitude, but a great deal of caution is also required in its exercise. The requirement is, the application of well known legal principles involved in each and every matter. Adverting back to the facts of the present



case, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 Cr.PC at this stage. More so, the defence as raised by the petitioner in these petitions requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.PC and the same can only be proved in the Court of law.

13. In *Sripati Singh (since deceased) Through His Son Gaurav Singh vs. State of Jharkhand & Anr., Criminal Appeal No. 1269-1270 of 2021 (Arising out of SLP (CRL) No. 252-253 of 2020)*, decided by the Hon'ble Supreme Court on 28.10.2021, it is observed and held as under:

"16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

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22. These aspects would prima-facie indicate that there was a transaction between the parties towards which a legally recoverable debt was claimed by the appellant and the cheque issued by the



respondent No.2 was presented. On such cheque being dishonoured, cause of action had arisen for issuing a notice and presenting the criminal complaint under Section 138 of N.I. Act on the payment not being made. The further defence as to whether the loan had been discharged as agreed by respondent No.2 and in that circumstance the cheque which had been issued as security had not remained live for payment subsequent thereto etc. at best can be a defence for the respondent No.2 to be put forth and to be established in the trial. In any event, it was not a case for the Court to either refuse to take cognizance or to discharge the respondent No.2 in the manner it has been done by the High Court. Therefore, though a criminal complaint under Section 420 IPC was not sustainable in the facts and circumstances of the instant case, the complaint under section 138 of the N.I Act was maintainable and all contentions and the defence were to be considered during the course of the trial."

14. In ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr., Criminal Appeal No. 1497 of 2022***, decided by the Hon'ble Supreme Court on 11.10.2022, it is observed and held as under:

"Based on the above analysis of precedent, the following principles emerge:

(i) Where the borrower agrees to repay the loan within a specified timeline and issues a cheque for security but defaults in repaying the loan within the timeline, the cheque matures for presentation. When the cheque is sought to be encashed by the debtor and is dishonoured, Section 138 of the Act will be attracted;

(ii) However, the cardinal rule when a cheque is issued for security is that between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode. It is only where the loan is not repaid through any other mode within the due date that the cheque would mature for presentation; and



(iii) If the loan has been discharged before the due date or if there is an 'altered situation', then the cheque shall not be presented for encashment."

15. In view of the above, as far as the contention of the Ld. Counsel for the petitioner that the petitioner had issued blank cheques to the respondent for the purpose of security has no force in it as it is trite law that when a cheque given for the purpose of security is dishonoured, Section 138 of the Negotiable Instruments Act, 1881 will be attracted and all the contentions with regard to the terms of MOU and excess payments made by the petitioner are a matter of trial.

16. Therefore, no ground for quashing of the order dated 25.07.2019 and notice dated 03.03.2023 in Complaint Case No. 344/2019 and order dated 14.02.2020 and notice dated 14.10.2022 in Complaint Case No. 12459/2018 is made out and I also find no flaw or infirmity in the proceedings pending before the Trial Court. However, the Trial Court shall certainly consider and deal with the contentions and the defence of the petitioner in accordance with law.

17. Accordingly, the present petitions along with pending applications are dismissed being devoid of any merits.

RAJNISH BHATNAGAR, J

MAY 25, 2023/ib