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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: August 03, 2023

Decided on: September 05, 2023

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CRL.M.C. 3387/2019, CRL.M.A. 31088/2019 and CRL.M.A. 19834/2021

TOPLINE BUILDTECH PVT. LTD. & OTHERS

..... Petitioners

Through: Mr. Puneet Mittal, Senior Advocate with Ms. Vasudha Bajaj, Mr. Pratap Singh, Mr. Rupendra Pratap Singh and Ms. Sakshi Mehendiratta, Advocates.

V

STATE & ANOTHER

..... Respondents

Through: Mr. Utkarsh, APP for the State/r-1.. Ms. Lalit Mohini Bhat and Mr. Siddharth Agarwal, Advocates for R-2.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present petition is filed under section 482 Cr.P.C. to set aside the impugned summoning order dated 22.03.2019 passed by the Court of Sh. Vikram, MM-01, North, Rohini Courts, Delhi in Complaint Case bearing no.651/2019 titled as **M/s Arrow Equity Pvt. Ltd. V M/s Topline Buildtech Pvt. Ltd. & Others** under section 138 of Negotiable Instruments

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Act, 1881 (hereinafter referred as “**NI Act**”) along with consequential proceedings.

2. The respondent no.2/complainant filed the present complaint by alleging that the petitioner no.1 is a company incorporated under the Companies Act,1956 . The petitioner no 2 is the Managing Director of the petitioner no 1. The petitioner no.3 is the Director of the petitioner no.1 and the petitioner no.4 is Vice President of the petitioner no.1 and also one of the signatory of the cheques subject matter of present Complaint. The petitioners no.2 to 4 are in charge of and responsible for the day to day affairs for the petitioner no 1.

2.1 The respondent no 2 advanced a loan of Rs.1,30,00,000/- (Rs. one crore thirty lakhs) to the petitioner no.1 on 17.7.2013 through RTGS through the bank account of the respondent no 2 i.e. Indian Overseas Bank. Prashant Vihar, Rohini, Delhi. The petitioner no.1 issued two post-dated cheques as guarantee /security of the loan and for the purpose refund of the loan amount. The loan on request of the petitioner no.1 was extended to the petitioner no.1 from M/s. Host Finance & Investments Pvt. Ltd. which is a sister concern of the respondent no.2 as the respondent no.2 was not a NBFC on 3.3.2017 and 4.3.2014 in two instalments of Rs.70 lakhs and Rs.60 lakhs



respectively. The petitioner did not repay the cheque amount along with accrued interest.

2.2 The present complaint is filed on the basis of two security cheques bearing no.997640 amounting to Rs.70,00,000/- (Seventy lakhs) and 997641 amounting to Rs.60,00,000/- (Sixty lakhs) drawn on State Bank of India, Bhikaji Cama Place Branch which were issued in favour of the respondent no.2/complainant (hereinafter referred to as “**the respondent no 2**”) towards the discharge of liability and these cheques were got dishonoured when presented for encashment on the ground of “Payment Stopped by Drawer” vide Cheque Returning Memo dated 31.12.2018. The petitioners did not pay the cheque amount despite the notice dated 01.01.2019 which was replied vide reply dated 15.01.2019. Hence, the respondent no 2 filed the complaint under section 138 of NI Act.

3. The Court of Sh. Vikram, MM-01, North, Rohini Courts, Delhi vide order dated 22.03.2019 took cognizance for the offence punishable under section 138 of NI Act and accordingly summoned the petitioners. The order dated 22.03.2019 reads as under:

**Pre-summoning evidence by way of affidavit has been tendered.
I am satisfied that the present case comes within the ambit of
Section 138 N.I. Act.
Complaint as well as relevant documents perused.**



I am satisfied that the present complaint has been filed within limitation and within jurisdiction as well.

Prima facie, case seems to be made out against the accused.

Cognizance of offence is taken U/s 138 N.I. Act.

Issue summons against the accused on filing PF/RC/Speed post for 31.05.2019.

If service of summons could not be effected by any of the above said means then the concerned process server is directed to affix the copy of the same on some conspicuous part of the premises wherein the person summoned ordinarily resides, in terms of Section 65 Cr.P.C.

4. The petitioner no 2 had preferred a Writ Petition (Criminal) bearing no.2322/2019 before the High court of Jammu & Kashmir at Srinagar seeking constitution of SIT to monitor investigation of FIR bearing no 69/2019 registered at police station Anantnag. The police of Jammu & Kashmir lodged FIR bearing no.69/2019 against the Mr. Ajay Aggarwal and its company M/s Host finance & Investment Pvt. Ltd. in which authorized representative of the respondent no. 2 is the Director and investigation in progress. Pankaj Jain who is authorized representative and the Director of the respondent no 2 company filed a number of criminal cases against the petitioners to harass and extort money.

4.1 The cheques in question are not valid negotiable instruments as they exceed the special endorsement written on the face of the instrument i.e. value cannot exceed beyond Rs.50 lakhs. The present complaint on basis of



cheques in question is filed by the respondent no 2 against the petitioners is false and is filed only to extort money without any legal liability on the part of the petitioners as the loan which the respondent no.2 is claiming has already been repaid by the petitioners in two instalments through RTGS on 03.03.2014 And 04.03.2014. The respondent no 2 did not return the cheques in question back to the petitioner no1. The authorized representative of respondent no 2 also filed cases under section 138 NI Act before the court of Metropolitan Magistrate, Rohini and the Court of District Anant Nag, Jammu & Kashmir on basis of stolen cheques and the summoning orders in these cases were stayed by this Court vide order dated 30.05.2019 and the High Court of Jammu & Kashmir vide order dated 03.04.2019. The cheques in question admittedly are security cheques which were not returned by the respondent no.2 after the repayment of the loan amount and as such the petitioner no.1 was constrained to issue instruction to stop payment to its banker vide letter dated 07.10.2014.

4.2 The petitioners further stated that in September, 2014 four cheques bearing nos. 997642, 997643, 997644 and 997645 belonged to the petitioner no.1 were found to be stolen. The petitioner no.2 on behalf of the petitioner no.1 fearing misuse of undated signed blank cheques directed its banker that



any payment against these cheques be stopped. The petitioner no.2 on behalf of petitioner no 1 also wrote a complaint to the Station House Officer, Police Station Mehrauli, New Delhi on 27.9.2014 informing that the four cheques bearing nos. 997642, 997643, 997644 and 997645 of State Bank India have been stolen and said information was recorded vide NCR bearing no 1361/2014 dated 01.10.20. The petitioners no 1 and 2 were shocked after receipt of legal notice dated 28.08.2018 on behalf of Pankaj Jain, Director of M/s Host Finance and Investment Pvt. Ltd. under section 138 of NI Act wherein it was alleged that the cheque bearing no 997645 allegedly issued by the petitioner no.1 to the respondent company for the discharge of a debt or liability amounting to Rs.75 lakhs deposited by respondent with J&K Bank, Branch Office at Cheeni Chowk, Anantnag, Kashmir was dishonoured by the bankers of the petitioner no.1 for the reasons "insufficient funds" and threatened to initiate complaint case under section 138 NI Act against petitioner no 1. The cheque bearing no 997645 was one of the 4 cheques which were found missing/stolen from the office of the petitioner no.1 office in 2014 and in respect of which NCR No. 1361/2014 dated 01.10.2014 was registered at PS Mehrauli, New Delhi. The petitioner no 1 vide its reply dated 20.09.2018 placed correct facts. M/s Host Finance and



Investment Pvt. Ltd. through its manager Sania Fayaz filed a private criminal complaint no 194/2018 against the petitioners no.1 and 2 before the court of CJM, Anantnag on the basis of the aforesaid cheque bearing no 997645 seeking to take cognizance against the office bearers of the petitioner under sections 420/109/120B/34/403/406/ 506/507, Ranbir Penal Code. The petitioner no.1 came to know that M/s Host finance and Investment Pvt. Ltd. company and its representatives had criminally misappropriated / stolen 4 cheques including the cheque bearing no 997645. The petitioner no 1 filed a complaint dated 19.09.2018 on 26.09.2018 vide entry no 57B before SHO, Police Station Mehrauli and accordingly FIR no 732/2018 under section 380 IPC dated 12.11.2018 was got registered against Pankaj Jain and Ashok Kumar, Directors of M/s Host Finance and Investment Pvt. Ltd. M/s Host Finance and Investment Pvt. Ltd. on 15.10.2018 filed a complaint case no 219/2018 under section 138 NI Act on basis of dishonour of cheque no 997945 **titled Pankaj Jain V Topline Buildtech Pvt. Ltd. & Others** before the District Mobile Magistrate Traffic, Anantnag District Courts, Kashmir, arraying the petitioner no.1 as accused but none of its directors / office bearers was arrayed as a party nor there is any specific allegation against its directors / office bearers in the said



complaint. The High Court of Jammu and Kashmir at Srinagar vide order dated 11.12.2018 passed in Cr.M.C. no 479/2018 stayed the proceedings in the private criminal complaint no. 194/2018. The High Court of Jammu and Kashmir at Srinagar vide order dated 03.04.2019 passed in Cr.M.C. no 92/2019 stayed the proceedings in complaint case bearing no 219/2018. This court in Crl.M.C. No.3008/2019 vide order dated 30.05.2019 stayed the proceedings of the complaint filed by the authorized representative of the respondent no.2 in respect to cheques no 997643 and 997644.

4.3 The petitioners impugn present complaint case bearing no. 651/2019 and summoning order dated 22.03.2019 along with consequential proceedings on various grounds. The cheques in question bearing no 997640 & 997641 are not valid negotiable instruments as they exceed the special endorsement on the instruments i.e. value cannot exceed beyond Rs.50 lakhs. The respondent no 2 had concealed the fact that the loan amount was already repaid through RTGS on 03.03.2014 and 04.03.2014 as reflected from bank statement of the petitioner no.1 and security cheques were used in the present complaint only for the sole motive of extortion of money. The director of the respondent no 2 is also a director of different companies and being an authorized representative of the sister concern/company field false



and fabricated cases against the petitioners which were stayed by this court and the High Court of Jammu & Kashmir. The petitioners prayed as under:-

- (a) Set aside summoning order dated 22.03.2019 passed by Mr. Vikram, MM-01, North, Rohini Court, Delhi**
- (b) Quash the Complaint case no. 651/2019, titled "M/s Arrow Equity Pvt. Ltd. Vs. Topline Buildtech Pvt. Ltd. & others" pending before Mr. Vikram, LD. MM- 01, North, Rohini Court, Delhi and all other proceedings emanating from the above said complaint case; and**
- (c) Pass any other or further orders as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case.**

5. The respondent no 2 filed reply.
6. The learned Senior Counsel appearing on behalf of the petitioners argued that it is reflected from the reply dated 15.01.2019 to the legal notice dated 01.01.2019 that the cheques bearing nos.997640 and 997641 were security cheques issued by the petitioner no.1 to the respondent no. 2. The petitioner no. 1 has already repaid the entire loan to the respondent no. 2 through RTGS on 03.03.2014 and 04.03.2014 as such no liability remained against the petitioners qua the respondent no. 2. The security cheques do not give rise to any right in favour of the respondent no. 2 particularly after the repayment of the loan amount. The learned Senior Counsel for the petitioners also argued that the cheques in question were only valid for an amount of up to Rs. 50 lakhs but the cheques in question were issued for



amounts of more than Rs. 50 lakhs and as such, the cheques in question were not validly issued on behalf of the petitioner no 1 and as such the cheques in question bearing no 997640 and 997641 do not fall within the ambit of NI Act. The respondent no.2 has also changed its stand qua the cheques in question as in reply to the petition under section 482 Cr.P.C. stated that the cheques in question were issued to realise the interest. The present complaint and summoning order dated 22.03.2019 are liable to be quashed.

7. The Supreme Court in **Kusum Ingots & Alloys Ltd. V Pennar Peterson Securities Ltd. & others**, (2000) 2 SCC 745 laid down the following ingredients for taking cognizance under sections 138 NI Act:-

- (i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability**
- (ii) That cheque has been presented to the bank within a period of six months from the date on which it is drawn of within the period of its validity, whichever is earlier**
- (iii) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank**
- (iv) The payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid

(v) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course within 15 days of the receipt of the said notice

(vi) The complaint is to be filed within one month from the date of expiry of the 15 days from the receipt of the notice.

8. The Supreme Court in *Pepsi Foods Ltd. V Special Judicial Magistrate*,

(1998) 5 SCC 749 regarding summoning observed as under:-

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

9. The Supreme Court in *Tedhi Singh V Narayan Dass Mahant*, Criminal

Appeal No 362 of 2022 (arising out of SLP (Crl) No.1963 of 2019) decided

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on referred **Basalingapa V Mudibasappa**, (2019) 5 SCC 418 wherein it was observed as under:-

25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

10. In Sripati Singh (since deceased) through his son Gaurav Singh V The State of Jharkhand & another, Criminal Appeals no 1269-70 of 2021 decided on 28th October, 2021 by the Supreme Court, it was contended that the learned Judge of the High Court had in fact committed an error in arriving at the conclusion that the cheque issued by the respondent no 2 was towards 'security' and that the same could not have been treated as a cheque issued towards the discharge of legally recoverable debt. The Supreme Court observed 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.

17. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all



circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

11. The respondent no 2 alleged that the respondent no 2 advanced a loan of Rs. 1,30,00,000/- (Rs. one crore thirty lakhs) to the petitioner no.1 on 17.7.2013 and the petitioner no.1 issued two post-dated cheques as guarantee /security of the loan and for the purpose refund of the loan amount. The petitioner no.1 did not repay the cheque amount and accrued interest. Thereafter the respondent no 2 presented two security cheques bearing no 997640 amounting to Rs. 70,00,000/- (Seventy lakhs) and 997641 amounting to Rs. 60,00,000/- (Sixty lakhs) drawn on State Bank of India, Bhikaji Cama Place Branch towards the discharge of liability i.e. loan amount but these cheques were got dishonoured on the ground of "Payment Stopped by Drawer" vide Cheque Returning Memo dated 31.12.2018. The respondent no.2 also issued notice dated 01.01.2019 which was replied vide reply dated 15.01.2019 but the petitioner no 1 did not pay loan amount. The respondent no 2 in notice dated 01.01.2019 asserted above said facts.

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The petitioners alleged that the petitioners has already repaid loan amount as claimed by the respondent no 2 in two instalments through RTGS on 03.03.2014 and 04.03.2014 as reflected from bank statement but the respondent no 2 did not return the cheques in question back to the petitioner no1. It is reflected that the respondent no 2 advanced loan of Rs.1,30,00,000/- to the petitioner no 1. The petitioner no 1 issued cheques in question bearing no 997640 amounting to Rs. 70,00,000/- (Seventy lakhs) and no 997641 amounting to Rs. 60,00,000/- (Sixty lakhs) drawn on State Bank of India, Bhikaji Cama Place Branch. Although the petitioners claimed that loan of Rs. 1,30,00,000/- has already been repaid as reflected from statement of bank account but this fact is not admitted by the respondent no 2. The issues raised by the petitioners can only be decided during trial and after evidence to be led by the petitioners and the respondent no 2. The cheques in question at this stage cannot be stated as not issued in discharge of legally enforceable debt and no liability can be fastened on basis of these cheques. The cheques in question issued as security cheques cannot be considered as mere waste paper and worthless of claiming enforcement of liability or right arising out of these cheques particularly advancement of loan by the respondent no 2 is not disputed by the petitioners. The cheques



in question have become enforceable when the petitioners did not repay the loan amount as claimed by the respondent no 2. The proposed defence of the petitioners cannot be legally considered at time of taking cognizance by the trial court which is obliged to take cognizance merely on basis of allegations as made in complaint and pre summoning evidence if any.

12. The learned Senior Counsel for the petitioners also argued that the cheques in question are not valid legal instruments as these cheques as per special endorsement made on them were only valid for amount up to Rs.50 lakhs but cheques in question were stated to be issued for amount more than Rs. 50 lakhs. The argument so advanced by the learned Senior Counsel is without legal force and sanctity. The cheques in question were allegedly issued by the petitioner no.1 with the knowledge that these cheques are valid only for an amount of upto Rs.50 lakhs.

13. On the basis of pleas as taken in the present petition and arguments advanced by the learned Senior Counsel for the petitioners, the summoning order dated 22.03.2019 cannot be recalled. The petition is devoid of any merit. Hence, the present petition along with pending applications, if any, stands dismissed. Interim stay, if any, stands vacated. However, the petitioners shall be at liberty to raise all the pleas and contentions, as



mentioned in the petition during the trial.

SEPTEMBER 05, 2023

j/am

DR. SUDHIR KUMAR JAIN, J



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Signature Not Verified

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By: JITENDRA
Signing Date: 15.09.2023
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