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

% **Date of decision :18.12.2023**
+ **CRL.M.C. 9166/2023**

TWINCITY SUNLIFE PVT. LTD. & ORS. Petitioners

Through: Archit Jayakar, Advocate
(through VC)

versus

OXYZO FINANCIAL SERVICES PVT. LTD. Respondent

Through: Mr. Amitesh Giroti, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J (ORAL)

CRL.M.A. 34244/2023 (exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 9166/2023 & CRL.M.A. 34243/2023 (stay)

1. The present petition under Section 482 Cr.P.C has been filed by the petitioners seeking the following reliefs: -

"(a) That this Hon'ble Court be pleased to quash /set aside the Complaint bearing CC NI Act No. 6311 of 2023 filed before the Learned Metropolitan Magistrate, Saket Courts, South District, New Delhi;

(b) That this Hon'ble Court be pleased to quash and set aside the Process Order dated 26 July 2023 passed by the Learned Metropolitan Magistrate, Saket Courts, South District, New Delhi in CC NI Act No. 6311 of 2023;



(c) For such further and other reliefs as the circumstances of the case may require."

2. The complainant (respondent herein) had instituted a complaint under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 against the present petitioners in respect of non-payment against one dishonoured cheque for the amount of Rs. 4,27,942/- issued by petitioners in favour of the respondent.
3. The Metropolitan Magistrate vide Order dated 26.07.2023 issued summons under Section 138 of Negotiable Instruments Act, 1881 requiring the petitioners to attend the Court.
4. The petitioners feeling aggrieved, filed the present petition invoking jurisdiction of this Court U/s 482 Cr.P.C.
5. It has been mainly argued by the Ld. Counsel for the petitioners that the complaint filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 against the petitioners is false and frivolous and is a malafide attempt by the respondent to arbitrarily create a false debt of the petitioners, by concealing material facts. He further submitted that the complaint is aimed at harassing the petitioners with the sole motive to extract and extort money from the petitioners as the claim of the sum of Rs. 4,27,942/- vide its notice dated 17.04.2023 by the respondent is completely false as the entire amount has already been paid by the petitioners on 14.04.2023 and the said claim for Rs. 4,27,942 is nothing but an afterthought and is premised on a notice sent to the petitioners after the matter was entirely settled. He further submitted that as recorded in the Order



dated 31.03.2023, the demand made by the respondent that was outstanding was a sum of Rs. 82,95,527.83/- and accordingly, the petitioners undertook to pay the said amount by 15.04.2023 and it was in fact paid on 14.04.2023 and thus, further alleged demand by the respondent of Rs. 4,27,942/- was not due and was never raised by the respondent on 31.03.2023, and it is only after the High Court Suit was disposed off by the Hon'ble Bombay High Court on 17.04.2023 that the respondent has made this false and untenable claim of Rs. 4,27,942 upon the petitioners. He submitted that even the email sent by the respondent on 03.04.2023 stated that a sum of Rs. 82,95,527/- would fall due for payment in the next 15 days and accordingly, the petitioners had paid the entire sum of Rs. 82,95,527/- to the respondent on 14.04.2023 and moreover, in a reply e-mail dated 14.04.2023, the respondent also confirmed receiving the said amount for the petitioners. He further submitted that during the period starting from 01.04.2023 to 07.04.2023, the respondent had also unlawfully enriched themselves with the amount of Rs. 1,30,00,000, being the value of the Bank Guarantees and although a sum of Rs. 82,95,527.83/- was demanded and had been agreed to be paid by the petitioners but even otherwise, the respondent had illegally enriched themselves by a sum of Rs. 47,04,472/- which was not even payable to them.

6. Ld. counsel for the petitioners has further urged that the respondent has misused the cheque of ICICI Bank bearing No. 000642 which was issued to the respondent for the purpose of security, not in discharge of any existing legally recoverable debt or liability as



alleged by the respondent. He further submitted that the respondent has misused the impugned cheque in breach of mutual trust between the parties and the proceedings under Section 138 N.I. Act initiated by the respondent is false and frivolous and they have even failed to explain the computation of the amount in default and thus, by no stretch of imagination it can be assumed that there exists a legally enforceable debt or liability against the petitioners.

7. On the other hand, Ld. counsel for the respondent submitted that the cheque amount in question i.e., 4,27,942 was due and outstanding as on 15.04.2023 and the petitioners herein falsely alleged that the respondent-complainant has failed to explain the computation of the amount in default. He submitted that the respondent in its impugned complaint before the Ld. Trial court had annexed loan documents, agreements along with ledger and the same clearly depicts the agreed charges as well as interests. He further submitted that the petition filed by the petitioners before the Hon'ble Bombay High Court was with respect to the Bank Guarantees issued by the petitioners in favour of OFB Tech Pvt. Ltd and not with respect to the total outstanding of the petitioners, moreover, OFB Tech Pvt. Ltd which although is a sister concern of the respondent company, is however a separate legal entity and hasn't been made a party to the present petition and furthermore, it is an admitted fact that the Hon'ble High Court of Bombay had not passed any order with respect to the total outstanding balances to be paid by the petitioners to the respondent company. He submitted that in the order dated 17.04.2023 passed by the Hon'ble Bombay High Court, it has been recorded that



"although the learned Counsel for Defendant No.1 has submitted that rights and contentions of Defendant No.1 be kept open, it is not necessary to keep open the rights and contentions of Defendant No.1 and in the event the Defendant No.1 is at all aggrieved, they may resort to their own proceedings." and therefore, the order clearly depicts the fact that the dispute between the petitioners and respondent hadn't ended and the order was with respect to the Bank Guarantees in question. He submitted that it has been held in a catena of judgments that the consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable and quashing of the 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, furthermore, if this is allowed, the accused may be given an un-merited advantage in the criminal process. He further submitted that the contention of Ld. Counsel for the petitioners that the cheque had been issued to the respondent for the purpose of security is baseless and without any merit. Lastly, he submitted that the presumption under Section 139 N.I. Act includes a presumption that there exists a legally enforceable debt and liability, and therefore, the present petition filed by the petitioners is devoid of merits and is liable to be dismissed with exemplary costs.

8. 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 of the Cr.PC & under Section 263(g) of the Cr.PC.

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 petitioners that the petitioners had issued the cheque in



question 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.

16. Moreover, the contentions of counsel for the petitioners that the claim of the sum of Rs. 4,27,942/- vide its notice dated 17.04.2023 by the respondent is completely false as the entire amount has already been paid by the petitioners on 14.04.2023 and furthermore, the said claim for Rs. 4,27,942 is nothing but an afterthought and is premised on a notice sent to the petitioners after the matter was entirely settled, does not cut much ice as these are all issues which cannot be looked into at this stage and are a matter of trial.

17. Therefore, no ground for quashing of the CC NI Act No. 6311 of 2023 and setting aside of order dated 26.07.2023 in CC NI Act No. 6311 of 2023 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 petitioners in accordance with law.

18. Accordingly, the present petition is dismissed being devoid of any merit. CRL.M.A. 34243/2023 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

DECEMBER 18, 2023