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Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

CRM (M) No. 335/2024
CrlM No. 812/2024

Nisar Ahmad Nengroo ….. Petitioner (s)

Through: Mr. Parvaiz Nazir, Adv.

V/s

Bashir Ahmad Khan

….. Respondent(s)

Through:

Coram:

Hon'ble Mr. Justice Sanjay Dhar, Judge.

ORDER

20.07.2024

1. The petitioner has challenged order dated 19.03.2024 passed by the learned Chief Judicial Magistrate, Shopian whereby in a complaint filed by the respondent against the petitioner under Section 138 of NI Act, process has been issued against the petitioner.
2. The main ground urged by the learned counsel for the petitioner for impugning the order dated 19.03.2024 passed by the learned trial Magistrate is that the complaint has been filed by the respondent prematurely inasmuch as the period of 15 days from the date of service of demand notice had not expired as on date of filing of the complaint.
3. A perusal of the documents placed on record by the petitioner reveals that the notice of demand was sent by the respondent to the petitioner through registered post on 21.02.2024 and the complaint has been

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filed before the learned trial Magistrate on 14.03.2024. As per the averments made in the complaint, the demand notice was served upon the petitioner on 21.02.2024 which is being disputed by the petitioner on the ground that no such demand notice was ever served upon him. The question whether or nor the demand notice was served upon the petitioner and if it was served on which date he had received it is a matter which can be determined during the trial of the case and not in these proceedings. Therefore it would not be appropriate for this Court to entertain challenge to the impugned order on this ground at this stage.

4. The other ground urged by the learned counsel for the petitioner is that the Bank has issued the joint dishonour memo dated 16.02.2024 with regard to as many as three cheques valuing Rs. 29.00 lacs in all, whereas the subject matter of the impugned complaint is a single cheque for an amount of Rs. 22.00 lacs, on this ground it is urged that it cannot be presumed that the petitioner did not have sufficient funds in his account for honouring the said cheque. In this context if we look at the dishonour memo dated 16.02.2024 it pertains to the cheque Nos. 534862, 143686 and 8384 for an amount of Rs. 22.00 lacs, Rs 5.00 lacs and Rs 2.00 lacs respectively. The subject matter of the impugned complaint is cheque bearing No. 534862 dated 08.02.2024 for an amount of Rs. 22.00 lacs which is included in the dishonour memo dated 16.02.2024. The question whether the petitioner was

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having sufficient funds in his account to honour the aforesaid cheque cannot be decided at this stage particularly when the petitioner has not placed on record any document to show that he had to the credit of his account amount in excess to Rs. 22.00 lacs at the relevant time. It will, however, be open to the petitioner to produce material before the trial court to show that amount in excess of Rs. 22.00 lacs was lying to the credit of his account. In the absence of any such material before this Court, the proceedings against the petitioner cannot be quashed at this stage. Therefore, challenge to the impugned order passed by the learned trial Magistrate does not sustain.

5. For the foregoing reasons, the petition lacks merit and is dismissed accordingly.

(Sanjay Dhar)
Judge

SRINAGAR
20.07.2024
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