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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision:- 09.09.2024

M/s Ved Jagat Private Ltd. and Ors.

....Petitioners

Vs.

Neeti Sood

...Respondent

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Arshdeep Singh Bhullar, Advocate for the petitioners.

None for respondent.

AMARJOT BHATTI, J.

1. M/s Ved Jagat Private Ltd. through its authorized signatory Amit Sardana and others filed this petition under Section 482 Cr.P.C. for quashing of complaint bearing No.4685 of 2022 dated 28.07.2022 filed under Section 138 of Negotiable Instruments Act, 1881 titled as "*Neeti Sood vs. M/s Ved Jagat Private Ltd. and Ors.*" (Annexure P-1) and summoning order dated 18.08.2022 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Chandigarh or any other order which the Court may deem fit considering the peculiar facts and circumstances of the case.

2. As per facts of the case, Neeti Sood filed a complaint alleging that she had given Rs.5 lacs for purchasing shares to the accused but accused No.3 did not bother to complete share holder agreement nor allotted shares of M/s Eyemyeye Private Limited to the complainant. On

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this, complainant requested accused No.3 to return his money and ultimately on her request accused No.1-company issued cheque No.000359 dated 25.04.2022 for a sum of Rs.5 lacs of ICICI Bank, Suncity Gurgaon Branch in the name of complainant. Said cheque was issued under the signatures of accused No.3. Accused No.2 issued letter along with cheque in question that the company (accused No.1) refunded amount of Rs.5 lacs. Said cheque was presented for encashment but it was dishonored with remarks that “payment stopped by drawer” vide memo dated 10.05.2022. Legal notice dated 09.06.2022 (Annexure P-2) was given and it was replied vide letter dated 25.06.2022 (Annexure P-3). When no payment was made, present complaint (Annexure P-1) was filed.

After recording pre-summoning evidence impugned order dated 18.08.2022 (Annexure P-4) was passed by learned Judicial Magistrate Ist Class, Chandigarh. Feeling aggrieved of complaint and summoning order, present petition has been filed.

3. Learned counsel for petitioners argued that respondent/complainant filed complaint (Annexure P-1) by concealing material facts. After passing of impugned summoning order dated 18.08.2022 (Annexure P-4), bailable warrants of petitioners have been issued for 20.03.2023. Passing of summoning order is challenged on the ground that at the time of issuance of post dated cheque dated 25.04.2022, e-mail was sent to respondent/complainant to defer the presentation of cheque till 30.04.2022 as petitioners were making arrangements for funds to return the money. Another e-mail dated 29.04.2022 was again sent to defer presentation of cheque till 02.05.2022. On 02.05.2022, a sum of Rs.1



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lac and on 09.05.2022 sum of Rs.1.5 lacs were deposited in the account of respondent/complainant and she was duly informed by sending e-mail (Annexure P-5). Copy of statement of bank account of petitioner No.1(company) is Annexure P-6. Before presentation of cheque, respondent/complainant had already received Rs.2.5 lacs, therefore as per the provisions of Section 56 read with Section 15 of Negotiable Instruments Act, 1881 complainant was required to make an endorsement on the cheque regarding part payment already received by her. Respondent/complainant was not competent to present the cheque for encashment to the tune of Rs.5 lacs. In support of his arguments, learned counsel for petitioners has relied upon the judgment of Hon'ble the Supreme Court of India **2023(1) R.C.R.(Criminal) 408** titled as **“Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and Anr.”**. Relevant paragraphs 29 and 30 run as under:-

“29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without



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recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

30. In view of the discussion above, we summarise our findings below:

(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

In view of this, complaint filed by respondent/complainant Neeti

Sood is not maintainable. Therefore, the complaint (Annexure P-1) as well

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as summoning order dated 18.08.2022 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Chandigarh may be quashed by accepting the present petition.

4. Notice of petition was given to the respondent who did not appear despite service.

5. I have considered the arguments and have gone through the record with the able assistance of learned counsel for petitioners. Present petition for quashing of complaint under Section 138 of Negotiable Instruments Act, 1881 and summoning order dated 18.08.2022 has been filed on the ground that complainant concealed material facts from the Court. It is the case of petitioners that they had sent e-mail to the complainant requesting to defer the presentation of cheque for encashment till 30.04.2022, then to defer presentation of cheque till 02.05.2022 and thereafter Rs.1 lac was deposited on 02.05.2022. Another amount of Rs.1.5 lacs was also deposited on 09.05.2022. To support this fact, they have also placed on record copy of statement of bank account (Annexure P-6).

Complaint filed under Section 138 of Negotiable Instruments Act, 1881 before the concerned trial Court is at the stage of summoning of accused. Offence is bailable. Present petitioners can always appear before trial Court to explain the aforesaid factual position. At the time of summoning of accused, evidence led by the complainant supported by documents was looked into and they were ordered to be summoned vide summoning order dated 18.08.2022. Aforesaid facts were never put forward before the trial Court. Certain facts can be proved on record during

the course of the trial. Under these circumstances, it will be appropriate for the petitioners to appear before the trial Court and raise their defence at appropriate stage.

6. Therefore I do not find a fit case for quashing of complaint and summoning order referred above and petition is accordingly declined.
7. Aforesaid observations are made for the disposal of present case, having no bearing on the merits of the case.
8. Pending miscellaneous application(s), if any, stand disposed of accordingly.

09.09.2024

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No