IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-40329-2024
Date of decision: 21.08.2024

Babita Gupta .....Petitioner

Versus

Taruna .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Baljeet Beniwal, Advocate for the petitioner.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The instant petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') for quashing of Complaint bearing No.NACT-1041 of 2024 dated 02.04.2024 (Annexure P/1) titled as 'Taruna Vs. N.K. Builders' filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') pending before learned Judicial Magistrate 1st Class, Faridabad, along with summoning order dated 02.04.2024 (Annexure P/2).

2. As per allegations levelled in the Complaint annexed as Annexure P/1 M/s N.K. Builders, through their partners i.e. the petitioner and co-accused Babu Lal Gupta, executed a sale agreement in favour of Manish Kukreja and Sukhdev Arora for a property i.e. 4th floor with terrace rights constructed on plot No.D4-01, Block D, BPTP Park Land, Sector-85, Faridabad, measuring 320 sq. yds. for a total sale

consideration of Rs.1.29 crores. Of this amount, the petitioner received Rs.30 lakhs as partial payment through cheques and cash. However, the petitioner in conspiracy with others and with an intent to defraud, sold the property to another individual instead of Manish Kukreja and Sukhdev Arora. Consequently, a police complaint was lodged against the petitioner for fraud. During investigation, a compromise was reached on 10.12.2023, between the petitioner and the complainants. As part of this settlement, the petitioner acknowledged her legal liability and agreed to pay certain amount as partial payment. However, in a further attempt to deceive Manish Kukreja and Sukhdev Arora, the petitioner issued a post dated cheque for Rs.15 lakhs dated 15.01.2024, drawn on Axis Bank, Kalkaji Branch, New Delhi. This cheque was sent by co-accused Babu Lal Gupta, a partner and authorized signatory of the accused partnership firm. When the complainants presented the cheque, it came to be dishonoured vide return memo dated 31.01.2024 with the remarks “Payment stopped by drawer”. Subsequently, a legal notice dated 20.02.2024 was then served upon the petitioner and the co-accused, demanding payment of money from them but to no avail. Thereafter, present complaint under Section 138 of the NI Act was lodged and the learned Trial Court vide order dated 02.04.2024 summoned the petitioner along with other co-accused to face trial.

3. Learned counsel for the petitioner contends that the learned Trial Court gravely erred in summoning the petitioner vide impugned order dated 02.04.2024. It is argued that the summoning order is patently illegal because the learned Trial Court failed to appreciate that

the petitioner is being falsely implicated, as she had no involvement in issuing the alleged cheque and was not even its signatory. Furthermore, there is no prima facie basis to proceed against her, as the cheque was signed by co-accused Babu Lal Gupta, who is the authorized signatory of the partnership firm as stated in the complaint also. Furthermore, the reply by the petitioner to the legal notice was duly sent to the complainants, however, the learned Trial Court erred in ignoring the same. It has still further been contended that the learned Trial Court overlooked the fact that this was a clear case of false implication, as the police, in collusion with the complainants, coerced the petitioner and the co-accused into signing the cheque and also extorted cash and various cheques from them under duress. Therefore, the complaint and summoning order being illegal deserved to be quashed.

4. I have heard learned counsel for the petitioner and perused the relevant material on record.

5. Admittedly, the cheque in question came to be issued by the co-accused- firm, of which petitioner is a partner and it was duly signed by co-accused Babu Lal Gupta, who too is a partner and the authorized signatory of the said firm. Furthermore, a perusal of the impugned complaint reveals that there are specific averments against the petitioner of being in charge of the daily affairs of the partnership firm and she also being involved in a case in which the compromise was affected between the parties. In ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another: (2005) 8 SCC 89***, Hon'ble the Supreme Court categorically held that if complaint includes specific allegations

indicating that a person was in charge and responsible for the business at the time of the alleged offence, that person can be held liable. Moreover, pre-charge evidence has already been presented, based on which the petitioner was duly summoned by the learned Trial Court vide order dated 02.04.2024. Therefore, the defence of the petitioner that she was not responsible for the day to day affairs of the partnership firm or that the compromise was made under duress is a matter that cannot be delved into at this stage under Section 528 of BNSS; it will be addressed during trial when both the parties present their respective evidence, which will then be adjudicated on the touchstone of cross examination.

6. As a sequel to the above, the instant petition is dismissed.

7. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

21.08.2024 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No