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

% Date of Decision: 08.05.2024

\+ **CRL.M.C. 576/2023 & CRL. M.As. 2249-50/2023**

MR PALLAV SINGHAL ..... Petitioner
Through: Mr. Paras Mittal, Advocate.

Versus

BANSAL TRADING COMPANY THROUGH PARTNER, MR DK AGGARWAL ..... Respondent
Through: Mr. Ashish Kapur, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of the complaint case being CC NI Act/1306/2022 filed under Section 138 of the Negotiable Instrument Act, 1881 (*'NI Act'*) as well as the summoning order dated 13.05.2022 passed by learned MM (NI Act), Digital Court-04, North West, Rohini Courts, Delhi and proceedings emanating therefrom.

2. The factual background, as available from the material placed on record, is that in the subject criminal complaint, it has been alleged by the respondent/complainant that the petitioner/accused is the sole proprietor of one *M/s Vision Enterprises*, which is involved in the business of manufacturing and trading of paints and raw materials for paints. It is stated that in and around December, 2017, an oral understanding was arrived at between the respondent and the petitioner for purchase of raw material for

paints. In discharge of his liability, the petitioner issued the subject cheque bearing number 753257 dated 16.02.2022 for Rs.25,000/- drawn on Punjab National Bank, Rithani-Delhi Road, Meerut, which when presented for encashment was dishonoured with the remarks 'funds insufficient' vide return memo dated 17.02.2022. In the complaint, it has been further averred that a legal notice was issued on 28.02.2022, which was neither replied to by the petitioner nor the cheque amount was paid.

3. In the present petition, the petitioner has contended that upon receipt of the information of dishonour of the subject cheque, an employee of the respondent visited the office of the petitioner on 02.03.2022 for the payment of the amount due under the cheque and in order to give a quietus to the issue, the petitioner made the entire payment of Rs.25,000/- (as due under the subject cheque) through UPI/banking channel from his personal account. In support of the said contention, reference is made to the bank account statement of the petitioner for the period of 01.03.2022 to 31.03.2022, which reflects credit of Rs.25,000/- in the account of the respondent. Even in response to the subsequent notice received through WhatsApp on 08.03.2022, the petitioner on the same day replied through WhatsApp that the entire amount under the subject cheque already stood paid from his personal account. It is thus the case of the petitioner that the entire amount under the subject cheque having been paid, no liability arises.

4. The respondent, on the other hand, though admitted receipt of Rs. 25000/-, has disputed the contentions raised by the petitioner, by contending that Rs.25,000/- received from the petitioner on 02.03.2022 was qua some other outstanding liabilities and was not towards the payment of the amount under the subject cheque.

5. The offence under Section 138 NI Act is complete when the conditions as stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque ought to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: MSR Leathers *v.* S. Palaniappan & Anr.[1], Charanjit Pal Jindal *v.* L.N. Metalics[2] and N. Harihara Krishnan *v.* J. Thomas[3].]

6. A perusal of the material placed on record would show that the subject cheque was for a specific amount of Rs.25,000/-. The legal notice issued to the petitioner is dated 28.02.2022 and further the petitioner has paid the full amount under the subject cheque on 02.03.2022 through UPI/banking channels. The payment of this amount is acknowledged by the complainant/respondent, who however, claims that the said amount was adjusted towards some other outstanding liability. Once an amount equivalent to the amount of the cheque is paid after the dishonour of the

[1] (2013) 1 SCC 177
[2] (2015) 15 SCC 768
[3] (2018) 13 SCC 663

cheque and issuance of legal notice, the liability of the drawer for the offence under Section 138 NI Act comes to an end. The respondent may have some other outstanding amount against the petitioner, for which it has the liberty to file requisite proceedings in accordance with law, if so advised.

7. In view of the aforesaid, petitioner's challenge to the complaint case and the consequent proceedings pending against him succeeds and the complaint is quashed. As a necessary sequitur, the impugned summoning order is also set aside.

8. The petition is disposed of in above terms along with pending applications.

MANOJ KUMAR OHRI
(JUDGE)

MAY 8, 2024/*rd*