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

+ **CRL.M.C. 1115/2024 & CRL.M.A. 4402/2024 (Stay)**

KULVINDER SINGH VIRDI

..... Petitioner

Through: **Mr. R.K. Bachan & Ms. Sandhya
Singh, Advs.**

versus

JAGMOHAN SINGH MARWAH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

12.02.2024

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1. The present petition under Section 482 of the CrPC seeks the following prayers:

“a) call for records of Complaint Case No.136/2020 titled as ‘Jagmohan Singh Marwah Vs Kulvinder Singh Viridi’ from Ld. Trial Court

b) set-aside/quash the impugned Order dated 17.9.2021 passed in Complaint Case No.136/2020 titled as ‘Jagmohan Singh Marwah Vs Kulvinder Singh Viridi’ by Ms. Chhaya Tyagi, Ld.MM-02 (NI Act) Digital Court, West, Tis Hazari Courts, Delhi, and to dismiss the complaint u/s 138 NI.Act.

c) pass any other or further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner.”

2. Learned counsel for the petitioner submits that as per the case of the complainant, the loan agreement was executed on 03.09.2015 and that there



was no acknowledgment or liability since 03.01.2016 (the date on which the loan was to be repaid) to 09.09.2020 (date of issuance of the impugned cheques). It is submitted that as per the loan agreement filed alongwith the complaint under Section 138 of the Negotiable Instruments Act, the impugned cheques have been mentioned, which shows that the date on the impugned cheques were manipulated subsequently and, therefore, it is argued that there is no legally enforceable liability as the loan in question was time-barred. Learned counsel for the petitioner placed reliance on a judgment passed by a coordinate bench of this Court in **Amrit Sandhu Costar v. State & Anr., 2022:DHC:3628**.

3. Heard learned counsel for the petitioner and perused the record.

4. The loan agreement relied upon by learned counsel for the petitioner reflects that the impugned cheques are referred to as security for the loan amount and are undated. The contention of learned counsel for the petitioner that the said loan was repaid is not supported by any document on record. The issue whether the dates on the cheques were manipulated or were put with the consent of the petitioner, is a disputed question of fact which cannot be adjudicated in the present proceedings under Section 482 of the CrPC. It is also pertinent to note that the question of limitation is a mixed question of law and fact which needs to be determined during the course of trial.

5. The Hon'ble Supreme Court, in **Atamjit Singh v. State (NCT of Delhi), Criminal Appeal No. 516 of 2024**, *vide* order dated 22.01.2024, has observed and held as under:

“3. The High Court by way of the Impugned Order deemed it appropriate to quash the underlying proceedings on the principal premise that as on the date of the issuance of the summoning order,



the underlying debt and/or liability qua Respondent No. 2 was time barred.

4. *Prima-facie* from the materials placed before us, it is revealed that pursuant to various transactions entered into by and between the (i) Appellant; (ii) Respondent No. 2; and (iii) Jasween Sandhu i.e., Accused No. 2 in the Underlying Complaint, allegedly pertaining to year 2011, the Appellant was owed a sum of approximately Rs.20,10,000/- (Rupees Twenty Lakh Ten Thousand). Accordingly Respondent No. 2 issued a cheque bearing number 329623 dated 06.03.2017 drawn on Syndicate Bank, Branch West Punjabi Bagh, Central Market, New Delhi-110026 for a sum of Rs.20,00,000/- (Rupees Twenty Lakh) in favour of the appellant (the “**Subject Cheque**”).

5. Upon a perusal of the Impugned Judgement, it is disclosed that High Court has relied upon (i) the Assured Returns Agreement dated 16.09.2011; and (ii) other receipts issued by the Appellant to Respondent No. 2, all of which pertain to transaction(s) entered into in the year 2011 to conclude that in the absence of an acknowledgment of any underlying debt between 2011 and the date of issuance of the Subject Cheque i.e., 06.03.2017, the underlying debt could not be held to be legally enforceable debt or liability on account of being barred by limitation. Accordingly, in the aforesaid circumstances, the prosecution of Respondent No. 2 under Section 138 of the NI Act was held to be improper; and accordingly, by way of impugned judgment, the High Court quashed the summoning order issued by the Trial Court; and the Underlying Complaint.

6. At the threshold, it would be apposite to refer to decisions of this Court in *Yogesh Jain v. Sumesh Chadha*, Criminal Appeal Nos. 1760-1761 of 2022 whereunder this Court has opined on the scope of interference by the High Court in proceedings under 138 of the NI Act qua an allegedly time barred debt at the stage of issuance of summons, whilst exercising its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (the “**CrPC**”). The operative paragraph in *Yogesh Jain (Supra)* has been reproduced as under:

“8. Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for



the Accused to dislodge the legal presumption available Under Sections 118 and 139 reply of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the Accused Under Section 482 of the CrPC.”

7. From a perusal of legal position enunciated above, it is clear that the classification of the underlying debt or liability as being barred by limitation is a question that must be decided based on the evidence adduced by the parties. We agree with aforesaid opinion. Undoubtedly, the question regarding the time barred nature of an underlying debt or liability in proceedings under Section 138 of the NI Act is a mixed question of law and fact which ought not to be decided by the High Court exercising jurisdiction under Section 482 of the CrPC.

8. Accordingly, the appeal is allowed, and the Impugned Order is set aside. The proceedings emanating from the Underlying Complaint i.e., CC No. 6437 of 2017 is restored to the file of the Trial Court.”

6. In view of the aforesaid pronouncement of the Hon’ble Supreme Court, the present petition is dismissed and disposed of accordingly.

7. Pending applications, if any, also stand disposed of.

8. Needless to state, nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of disposing of the present petition.

AMIT SHARMA, J

FEBRUARY 12, 2024/nk