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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 01.05.2024***

+ CRL.M.C. 549/2022 & CRL.M.A. 2402/2022 & CRL.M.A. 18463/2022

KRIPA SHANKER GIRI

..... Petitioner

Through: Mr.Vishal Bhatnagar, Ms.Lata
Walia, Ms.Reena Khunger &
Ms.Rani Yadav, Advs.

versus

UNITED BREWERIES LIMITED THROUGH ITS
AUTHORIZED REPRESENTATIVE Respondent

Through: Mr.D.Vibhor Kush, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for quashing of the Criminal Complaint, being CC No. 2538/2021, titled ***United Breweries Limited v. Kripa Shankar Giri***, and the Order dated 10.08.2021 passed on the above complaint by the learned Metropolitan Magistrate (NI Act) Digital Court-03, South East District, Saket, New Delhi (hereinafter referred to as the 'Trial Court') summoning the petitioner as an accused in the said complaint case under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').



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2. The above complaint has been filed by the respondent, alleging therein that it is in the business of brewing, manufacturing, and selling Beer, under the well-established brand name '*Kingfisher*'. It is alleged that the petitioner runs a retail outlet in the name and style of '*Akash Departmental Store*' and holds an L-12 licence for the retail vending of beer and wine in the departmental store for the licencing year 2019-20 valid till 31.03.2020, granted by the competent authority in the Government of National Capital Territory of Delhi. It is alleged that based on the representations of the petitioner, the respondent started supplying various brands of beer on orders received from the petitioner herein through the Excise Supply Chain Information Management System and against the district transport permits generated in response to the online purchase requests. The payments of the said orders were to be made on a running account basis.

3. It is alleged that till June 2019, the payments were made by the petitioner directly to the respondent. It is the case of the respondent that from July 2019 onwards, the respondent authorized the Commission Agent in the NCR region to receive the payments and requested its customers/vendors, including the petitioner herein, to make payment towards the invoices directly to the Commission Agent of the respondent, namely, M/s Brindco Sales Private Limited (hereinafter referred to as the 'Commission Agent') and an endorsement in this regard was



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made on each of the invoices. The respondent asserts that in case of default in payment, the customers were directly responsible and liable to the respondent alone.

4. It is further asserted that an amount of Rs.51,62,723.80/- was due from the petitioner and the petitioner issued a cheque bearing No. 000803 dated 14.03.2020 for Rs.21,69,775/- in favour of the Commission Agent towards part discharge of its liability. The said cheque was, however, returned unpaid with the remark '*Payment Stopper by Drawer*'. It is stated that this fact was communicated to the petitioner, whereafter the petitioner issued another cheque bearing No. 000804 dated 21.03.2020 for an amount of Rs.15,00,000/- in favour of the Commission Agent. The said cheque was also returned dishonoured with the remark '*Insufficient Fund*'. Thereafter the petitioner made an NEFT part payment of Rs.5,00,000/-.

5. It is alleged that since the L-12 Licence of the petitioner was not renewed for the period beyond 31.03.2020, the respondent demanded its balance payment, which was Rs.23,82,065.74. It is alleged that as the same was not paid, a final reminder dated 09.09.2020 was sent by the Commission Agent to the petitioner. It is alleged that the petitioner was warned that failing the payment, cheque no. 000685 drawn on HDFC Bank (the cheque in question), which was handed over to the respondent vide letter dated 01.04.2018, shall be presented for encashment. It is stated that the said cheque was



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thereafter presented for encashment, however, was returned unpaid with the remark '*Fund Insufficient*'. It is further stated that the respondent then issued a legal notice dated 07.01.2021 to the petitioner, and as no payment was made, the above complaint case was filed.

6. The learned counsel for the petitioner submits that even assuming that the alleged Commission Agent was acting as an agent of the respondent, in terms of Section 27 of the NI Act, the Commission Agent had no authority to accept the payment made against the invoices or issue a demand to the petitioner. He submits that as the payments were to be made to the alleged Commission Agent, the respondent cannot claim any amount from the petitioner and there is no legal liability owed by the petitioner to the respondent against which the cheque could be presented.

7. The learned counsel for the petitioner further submits that the payments were made against the invoices in the name of the alleged Commission Agent. He submits that the invoices have been duly endorsed in favour of the said entity.

8. On the other hand, the learned counsel for the respondent submits that only because the payment was directed to be made in favour of the Commission Agent appointed by the respondent, the petitioner does not get absolved of the liability owed by it to the respondent. He submits that it was the



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understanding between the parties that the petitioner would remain liable for the balance payment to the respondent. He submits that, in any case, these are disputed questions of fact which would need to be determined by the learned Trial Court on appreciating evidence that will be led by the parties before it during the trial. He submits that a dispute to the legal liability cannot be determined in the proceedings under Section 482 of the Cr.P.C.. In support, he places reliance on the judgment of the Supreme Court in *Sunil Todi & Ors. v. State of Gujarat & Anr.*, 2021 SCC OnLine SC 1174.

9. I have considered the submissions made by the learned counsels for the parties.

10. In the present case, the respondent does not dispute that since July 2019, on its instructions, the petitioner was to make payment against the invoices to the Commission Agent. The respondent claims that the said Commission Agent was its agent and not an assignee. On the other hand, it is the case of the petitioner that the said alleged Commission Agent was an assignee of the invoices from the respondent and, therefore, since July 2019, though the invoices have been raised by the respondent, due to their assignment to the alleged Commission Agent, no liability is owed by the petitioner to the respondent. In my view, these are disputed questions of facts, which would require appreciation of evidence that would be led by the parties before the learned Trial Court during the course of the trial.



These questions cannot be decided by this Court in a summary manner in the proceedings filed under Section 482 of the Cr.P.C. to scuttle the complaint filed by the respondent at an initial/nascent stage. What is relevant to note herein is that the invoices have been raised by the respondent; taxes are deducted from the account of and in the name of the respondent; and the supplies are made by the respondent itself against those invoices.

11. In ***Sunil Todi & Ors.*** (Supra), the Supreme Court has observed as under: -

“31. The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment. In Indus Airways, advance payments were made but since the purchase agreement was cancelled, there was no occasion of incurring any debt. The true purpose of Section 138 would not be fulfilled, if ‘debt or other liability’ is interpreted to include only a debt that exists as on the date of drawing of the cheque. Moreover, Parliament has used the expression ‘debt or other liability’. The expression ‘or other liability’ must have a meaning of its own, the legislature having used two distinct phrases. The expression ‘or other liability’ has a content which is broader than ‘a debt’ and cannot be equated with the latter. In the present case, the cheque was issued in close proximity with the commencement of power supply. The issuance of the cheque in the context of a commercial transaction must be understood in the context



of the business dealings. The issuance of the cheque was followed close on its heels by the supply of power. To hold that the cheque was not issued in the context of a liability which was being assumed by the company to pay for the dues towards power supplied would be to produce an outcome at odds with the business dealings. If the company were to fail to provide a satisfactory LC and yet consume power, the cheques were capable of being presented for the purpose of meeting the outstanding dues.

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34. The order of this Court in Womb Laboratories holds that the issue as to whether the cheques were given by way of security is a matter of defence. This line of reasoning in Womb Laboratories is on the same plane as the observations in HMT Watches, where it was held that whether a set of cheques has been given towards security or otherwise or whether there was an outstanding liability is a question of fact which has to be determined at the trial on the basis of evidence. The rationale for this is that a disputed question of this nature cannot be resolved in proceedings under Section 482 CrPC, absent evidence to be recorded at the trial.

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54. In the present case, it is evident that the principal grounds of challenge which have been set up on behalf of the appellants are all matters of defence at the trial. The Magistrate having exercised his discretion, it was not open to the High Court to substitute its discretion...

(Emphasis supplied)

12. Recently, in ***Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) and Another***, 2022 SCC OnLine SC 513, the



Supreme Court has again cautioned that power under Section 482 of the Cr.P.C. should not be exercised by the High Court to scuttle a complaint at an initial stage and in a mechanical manner. It was held that disputed questions of facts are best left to be determined by the learned Trial Court on a complete trial. I may quote from the judgment as under: -

“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the



factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.

(Emphasis supplied)

13. Section 27 of the NI Act would also have no application to the facts of the present case. Section 27 of the NI Act reads as under:-

“27. Agency.— Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.”

14. It is clear from the reading of the above provision that the above provision is intended to clarify that based only on a general authority to transact business and to receive and discharge debts, the agent does not get the power of accepting or indorsing bills of exchange so as to bind his principal. The present case does not involve this issue at all. It is not the case



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of either of the parties that the Commission Agent has accepted or indorsed any bill of exchange so as to bind the respondent.

15. In view of the above, the petitioner has not been able to make out a case for interference by this Court at this stage. I, therefore, find no merit in the present petition. The same is, accordingly, dismissed. The pending applications are also disposed of.

16. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 1, 2024/rv/AS

Click here to check corrigendum, if any