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

\+ CRL.M.C. 1390/2023 & CRL. M.A.5342/2023

SH. PAWAN GUPTA .....Petitioner

Through: Mr. Vishal Choubey, Advocate

versus

MAHAVEER AQUA PRIVATE LIMITED,
THROUGH ITS AUTHORIZED
REPRESENTATIVE .....Respondent

Through: Mr. Praveen Mahajan and Mr. Bhavya Manchanda, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

<u>O R D E R</u>

% 22.08.2024

1. By way of present petition, the petitioner seeks quashing of the summoning order dated 24.05.2019 and consequential proceedings arising therefrom passed by learned Judicial Magistrate (NI Act), Karkardooma Courts, Delhi, in Complaint Case No. 2139/2019 titled as <u>"MAHAVEER AQUA PVT. LTD. v. SH. PAWAN GUPTA"</u>

2. Facts, as per the complaint, are that the respondent/complainant company is a private limited company duly incorporated under the provisions of the Companies Act, 1956. It is the case of the respondent that the petitioner/accused had approached the respondent and represented himself as a proprietor of the firm namely M/s Nice Life Care Enterprises for the purpose of purchasing some goods manufactured by the respondent. The respondent supplied the goods and raised invoices bearing No. 2530/18-19 dated 12.01.2019, 2553/18-19 dated 17.01.2019 and 2705/18-19 dated 16.02.2019 of Rs. 2,80,014, Rs. 6,71,432/- and Rs. 3,25,680 respectively of

total amounting to Rs. 12,77,126/- which were duly acknowledged by the petitioner without any protest and demure. That against the above stated invoices the petitioner has made the part payment and in discharge of remaining debt issued 3 cheques bearing No. 119300 dated 13/03/2019, 119299 dated 13/02/2019 and 126591 dated 16/01/2019, drawn upon Union Bank of India, C.R. Park Branch, New Delhi of Rs. 2,36,000/-, Rs. 2,36,000/- and Rs. 3,00,000/- respectively totalling to Rs. 7,72,000/-. Upon presentment, cheque bearing No. 119300 and 119299 got dishonoured with remarks "Payment Stopped by the Drawer" and cheque bearing No. 126591 got dishonoured with the remarks "Funds Insufficient" vide return memos dated 16.03.2019. Subsequently, a legal notice dated 10.04.2019 was issued to the petitioner however, upon petitioner's failure to pay the amount under the subject cheques, the said criminal complaint under Section 138 Negotiable Instruments Act (hereinafter, referred to as "NI Act") came to be filed and the learned Trial Court issued summons against the petitioner vide order dated 24.05.2019.

3. Learned counsel for the petitioner submits that the learned Trial Court has passed the summoning order in a mechanical manner without appreciating the facts and applying the law. The petitioner has challenged the summoning order by arguing that he is neither the proprietor nor the authorized signatory of the proprietorship firm against whom the invoices have been raised. In this regard, he has drawn attention of the Court to the printout placed on record from the official Government website of Goods and service Tax (GST) having its GSTIN No. 09AAGCM9619JlZW registered in the name of *Mr. Deepak Gupta* as the proprietor of M/s Nice Life Care Enterprises. It is submitted that the petitioner has no relation whatsoever with the aforesaid firm.

Further, it is contended that the petitioner is neither signatory of cheque nor privy to any transaction and as such no liability accrues towards the petitioner. It is submitted that since the bank account from where the alleged cheque has been issued is not held in the name of the Petitioner, the basic requisite ingredient of Section 138 NI Act has not been fulfilled, hence the complaint case is liable to be quashed. In this regard, reliance has been placed on Jugesh Sehgal v. Shamsher Singh Gogi reported as **2009 SCC OnLine SC 1278**. Lastly, it is argued that Trial Court has erred in not conducting the mandatory inquiry under Section 202 CrPC which is necessary to be conducted in the event that the accused person is residing beyond the jurisdiction of the court. Therefore, the summoning order is bad in law and deserves to be set aside.

4. Learned counsel for the respondent submits that the facts presented by the petitioner are disputed facts. It is stated that the notice was issued before filing of the complaint and the same was also received but the petitioner never replied and clarified his position vis a vis cheque hence the averment of complaint is bona fide and ought to be taken as correct and presumption is shifted to petitioner to proof the contrary during the course of trial and not in section 482 petition.

5. I have heard learned counsels for the parties and have also perused the material placed on record.

6. Before proceeding to deal with the merits of the case, this Court deems it fruitful to restate the legal position regarding offences under Section 138 NI Act.

An offence under Section 138 NI Act is made out, when the conditions stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque, which has been drawn on an account maintained by the drawer, 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].]

7. In the present case, there is no material on record to show that the petitioner was proprietor of the said firm. Concededly, he is also not the signatory of the cheques. In the notice framed under Section 251 CrPC, the defence raised by the petitioner is that he has no concern with M/s Nice Life Care Enterprises and he is not the proprietor of the said firm. He claims to not have issued the cheques in question and that he did not enter in any transaction with the respondent. A perusal of the printouts taken from the official government website of Goods and service Tax (GST) would show that M/s Nice Life Care Enterprises is a sole proprietorship firm and registered in the name of one Mr. Deepak Gupta. Further, a perusal of the

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

complaint would show that the cheque is not claimed to be issued from the petitioner's account but from the account of the said firm.

8. In light of the facts discussed above, it can be seen that there is no material on record to show that the petitioner was a proprietor of the firm or that he was the signatory of the cheques. In the absence of any such material to bring the petitioner within the fold of Section 138, forcing the petitioner to stand trial solely on the basis of a bald averment, that too unsubstantiated, would amount to an abuse of the process of law.

9. Reference in this regard can be made the observations of the Supreme Court in S.P. Mani & Mohan Dairy v. Snehlata Elangovan[4] , wherein it was stated:—

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> *50. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averment, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.*
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> *xxx*
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> *57. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance*

[4] 2022 SCC OnLine SC 1238

of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of the process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner. xxx"

10. Considering the entire factual matrix including the fact that the petitioner has presented an unimpeachable and incontrovertible material in the form of printouts taken from the official website of Goods and service Tax (GST) which clearly shows that M/s Nice Life Care Enterprises is a sole proprietorship firm registered in the name of one *Mr. Deepak Gupta* and not the present petitioner as well as the fact that the respondent has failed to produce any material to the contrary, the present petition is allowed.

11. Consequently, the summoning order as well as the complaint against the present petitioner are quashed. Pending application is disposed of as infructuous.

MANOJ KUMAR OHRI, J

AUGUST 22, 2024/*rd*