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

% ***Reserved on: 7th August, 2024***
Pronounced on: 30th September, 2024

\+ **CRL.M.C. 364/2020, CRL.M.A. 1560/2020 (stay)**

1. **M/S MUSCLE FUELZ**
Partnership firm at Doiwala,
Dehradun, Uttarakhand,
Through its partner Lalit Mohan Pandey .....Petitioner No.1

2. **LALIT MOHAN PANDEY**
Partner M/s Muscle Fuelz,
Resident of 101/3, Awas Vikas Colony,
Haldwani, District Nainital,
Uttarakhand ....Petitioner No.2

Through: Ms. Sweta Rani, Advocate.

versus

UNITED SPIRITS LIMITED
Having office at UM House, 1st Floor,
Plot No. 35-P, Sector 44, Gurgaon,
Haryana .....Respondent

Through: Mr. Gaurav Mahajan and Mr. Siddharth Kaushik, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Petition under Section 482 of the Code of Criminal Procedure *(hereinafter referred to as 'CrPC, 1973')* has been filed on behalf of the

petitioners for setting aside the impugned Order dated 29.01.2019 *vide* which the petitioners have been summoned in the Complaint Case No. 3221/2019, titled *'United Spirits Limited vs. M/s Muscle Fuelz and Ors.',* in the Complaint under Section 138 of the Negotiable Instrument Act. *(hereinafter referred to as 'N.I. Act.')*

2. The petitioners, who are the respondents/accused in the Complaint under Section 138 of the N.I. Act, have submitted that the petitioner No. 2, Sh. Lalit Mohan Pandey is having a Proprietorship Firm in the name of M/s Muscle Fuelz, which is registered in Haldwani, District Nainital, Uttarakhand and is doing business in Liquor retail (IMFL) in Haldwani, Nainital, and during the period 2016-2017, had done business with the respondent Company. As sole proprietor, the petitioner No. 2 had given some cheques for the purpose of KYC, which were never returned by the respondent Company.

3. In the year 2017-2018, the petitioner No. 2 and the other accused Smt. Poonam Alle, partnered together for the business of retail of Liquor (IMFL) in the name of partnership firm M/s Muscle Fuelz i.e. the petitioner No. 1 at Doiwala, Dehradun. All the accounts were maintained in Dehradun only. The petitioner No.1 i.e. the Partnership Firm did its business in the year 2017-2018. The disputes arose *inter se* the parties in regard to the supply of liquor to be made to the respondent Company by the petitioner No. 1, the Partnership Firm.

4. According to the Petitioner, the blank Cheque No. 000946, which had been handed over by the petitioner No. 2, Sh. Lalit Mohan Pandey, to the respondent as the proprietor of his proprietorship firm Haldwani, Nainital, was misused by the respondent Company and an amount of Rs.70,22,334.28

was filled and presented for encashment on account of the petitioners, the Partnership Firm. The hand writing on the aforesaid cheque clearly shows that the amount has been filled subsequently and was not written at the time the cheque was handed over to the respondent Company.

5. The aforesaid cheque on presentation was returned on 28.11.2018 with the remarks *'Kindly Contact Drawer Drawee Bank'*. The petitioners have claimed that this cheque was never issued on behalf of the petitioner, the partnership Firm. Moreover, it was not returned on account of '*Exceeds Arrangement*' or *'Insufficient Funds.'*

6. The respondent issued Legal Notice dated 17.12.2018, to the petitioners demanding the amount stated in the dishonoured cheque. The parties tried to settle their *inter se* disputes, however, the respondent preferred the Complaint under Section 138 of the N.I. Act. The petitioners have been summoned *vide* Order dated 29.01.2019, without considering the aforesaid facts. The summoning Order is challenged on the ground that the cheque in question was not issued by the Partnership Firm/ Petitioners and that the dishonour was not on account of insufficiency of funds.

7. ***The respondent in its Reply***, has admitted that it had started doing business with the petitioner, the partnership firm of which the petitioner No. 2 was a partner with Smt. Poonam Alle, in the financial year 2017-2018. Petitioner No. 1 made various Orders of goods at regular intervals, which were duly dispatched by the respondent in compliance of the Orders and were received by the petitioners from time to time. The payments were made in the Mutual open and current running Account to the respondent. As per the Statement of Account, a sum of Rs.70,22,334.28 was due and payable by the petitioners, in discharge of this outstanding liability The petitioner No. 2, Sh. Lalit Mohan Pandey had issued the impugned cheque in favour of the respondent though on presentation, it was dishonoured and returned with remarks *'Kindly Contact Drawer Drawee Bank'*.

8. It is asserted that the cheque had been issued on behalf of the Partnership Firm, by the petitioner No. 2, Sh. Lalit Mohan Pandey, in discharge of its existing legal liability. Admittedly, the signatures on the cheque are of petitioner No. 2. Therefore, there is a presumption under Section 139 N.I. Act that exists against the petitioners.

9. It is further explained that the cheque issued by the petitioner No. 1 on behalf of the Partnership Firm, belongs to the same bank account as the cancelled cheque, which had been handed over by the petitioner along with the KYC. Notably, the date of printing of the cheque issued by the Petitioner for discharge of his liabilities is same as the cheque along with KYC i.e. on 11.05.2017. The Serial Number mentioned in the cheque is of the same series as that of the KYC cheque. The contention of the petitioners that the impugned cheque had been given in the year 2016 by the petitioner No. 2 as proprietor of his erstwhile Proprietorship Firm in the same name, is incorrect and palpably misconceived.

10. Learned counsel for the respondent, has placed reliance on *Dashrath Roop Singh Rathod vs. State of Maharashtra* (2014) 9 SCC 129, to assert that there is reverse burden on the petitioners to discharge that the cheque was not issued by the petitioners or that it was not in discharge of their existing legal liability. The issues raised by the petitioners are therefore, triable before the learned Metropolitan Magistrate. It is, therefore, submitted that there is no infirmity in the impugned Order and the Petition is liable to be dismissed.

11. **Submissions heard.**

12. There is no denial by the petitioners that the cheque in question bears the signatures of petitioner No. 2. His defence is that this cheque had been issued by him not in the year 2017-2018 but as in the year 2016, when he was running a sole Proprietorship Firm in the same name. Pertinently, this is a defence which has been taken, which is required to be proved in accordance with law during the trial. It has been rightly contended on behalf of the Respondent that once the signatures on the cheques have been admitted by the petitioner, it is for him to explain the circumstances in which the said cheque was issued. The onus is on the petitioners which has to be discharged during the trial and is not tenable at this stage of summoning.

13. The petitioners have also contended that the amount on the cheque was not filled up by the petitioner while handing over the cheque in the year 2016 but it is again a settled law that a person, who gives a blank cheque with unfilled amount or any other details with his signature, does so at his own risk.

14. In this context, it is pertinent to refer to the counter-arguments of the respondent, who have explained that the cheque in question seems to be from the same cheque book from which the other cheque had been handed over by the petitioners for the purpose of KYC. Also, these two cheques are of the same date i.e. 11.05.2017 are a part of the same series as indicated by their serial numbers where the impugned cheque was no. 000946 and cancelled cheque was no. 000934 that was provided with KYC documents. Therefore, there is a disputed question of fact and law, which cannot be adjudicated without the parties leading their respective evidence.

15. The *second substantial argument* raised on behalf of the petitioner is that the cheque had not been dishonoured on account of 'insufficiency of funds' but with the remarks *'Kindly Contact Drawer Drawee Bank'*. In this regard, it would be pertinent to refer to the case of *R. Jayalakshmi vs. Rashida*, (1991) SCC OnLine Mad 414 where the Madras High Court held that the endorsement 'refer to drawer' is a euphemistic way of informing the payee that the drawer of the cheque had got no amount to his credit to honour the cheque. Likewise, in the case of *Sachin Dubey vs. Umashankar,* 2020 (1) MPLJ 557 clarified that the true meaning of the words '*Kindly contact drawer/drawee'* may be determined only after the evidence is led by respective parties. Similarly, High Court of Andhra Pradesh in the case of *Syed Rasool & Sons and Ors.vs. Alidas & Company and Ors,* 1992 CriLJ 4048 observed that where the cheque is returned with the remarks *'refer to drawer'* the primary duty of the drawer of the cheque is to make the payment of the said amount, failing which the penal consequences shall follow.

16. From the aforesaid Judgments, it is evident that the remarks *'contact the drawer drawee'* do not lead to any inference of dishonour of cheque being not on account of *'insufficiency of funds.'* It is a matter of trial and cannot be considered at the stage of summoning.

17. From the perusal of the Petition and the documents herein, it is *prima facie* that a cheque had been issued by the petitioner No. 2 in favour of the respondent, which is asserted to be in discharge of existing legal liability. *Prima facie* the ingredients for summoning under Section 138 of the N.I. Act are made out and the learned Metropolitan Magistrate has rightly summoned the petitioners.

18. There is no illegality or infirmity in the Order of summoning dated 29.01.2019. The present Petition is accordingly dismissed and disposed of. The pending application also stands disposed of.

19. The learned trial court may proceed, in accordance with law and make an endeavour to expeditiously conclude the trial.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 30, 2024/RS