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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2034/2023 and CRL.M.A. 7729/2023
M/S. SHREE LAXMI TRADERS & ORS. Petitioners
Through: Mr.Shlok Suslen, Advocate

versus

M/S MOLYTROM SYNTHESIS P. LTD. Respondent
Through: Ms.Teena Srivastava, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% **ORDER**
07.05.2024

1. By way of present petition filed under Section 482 Cr.P.C., the petitioners seek to assail the order dated 01.10.2022 passed by learned MM, Dwarka Court, New Delhi, whereby they have been summoned as accused in the Ct. Case No.14458/2020 instituted under section 138 and 142 of the NI Act.

2. Facts, as discernible from the record, are that the respondent/complainant is stated to be manufacturer of lubricants for automotive, industrial and specialty grade for specific performances. In the complaint, it has been alleged that the petitioners/accused were provided certain goods/material and in discharge of their liability, a cheque bearing No. 066468 dated 03.07.2020 drawn on Union Bank of India, Kasanganj Branch, UP for an amount of Rs.5,00,000/- was issued. The said cheque when presented for encashment, was dishonoured with the remark 'funds insufficient' vide return memo dated 07.07.2020. A demand notice dated 24.07.2020 came to be issued to the petitioners, however, upon their failure



to pay the amount under the cheque, the subject criminal complaint came to be filed.

3. Learned counsel for the petitioners states that no offence under Section 138 NI Act is made out against them inasmuch as the entire liability already stood paid. It is stated that as per the ledger statement dated 01.04.2019 generated by the respondent in respect of business transactions from 01.04.2017 to 31.03.2019, the petitioners have already paid a sum of Rs.5,93,000/- on various dates to the respondent, out of the liability of Rs.6,88,171/-. It is further stated that the remaining liability of Rs.95,171/- also stood paid by the petitioners within 15 days of the receipt of the abovementioned demand notice through online transfer and reference in this regard is made to the bank statement. It is further contended that the subject cheque was issued as 'security'.

4. Learned counsel for the respondent, on the other hand, has contested the petition. Though the respondent acknowledges that the subject cheque was issued as security, however, at the same time, it is stated that it was assured that the said cheque would be honoured subject to prior intimation of atleast 15 days. It is stated that it was only after such intimation and upon assurance of the petitioners that the subject cheque was presented for encashment and upon its dishonour, offence under Section 138 NI Act was made out.

5. At the outset, it must be noted that even though learned counsel for the petitioner has relied upon certain ledger statement and bank statement, however, copy of the said documents have not been placed on record. Even so, the contentions sought to be put forth by the petitioner by placing reliance on the said documents would require to be proved during trial by



leading evidence. Further, in terms of the decision of the Supreme Court in Sunil Todi & Ors. v. State of Gujarat & Anr. reported as **2021 SCC OnLine SC 1174**, the issue of security cheque is a matter of trial, requiring evidence to be led.

6. Considering the aforesaid, I find no ground to entertain the present petition and the same is dismissed alongwith pending application. However, it is clarified that this Court has not made any observations on the contentions raised by the petitioners herein and they shall be at liberty to address submissions on the same before the trial court.

7. A copy of this order be communicated to the concerned trial court.

MANOJ KUMAR OHRI, J

MAY 7, 2024

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