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

\+ CRL.M.C. 2100/2023

MRS ANITA SARMAH ..... Petitioner

Through: Mr.Yash Vardhan, Advocate

versus

SHRI SUDHIR KUMAR SRIVASTAVA ..... Respondent

Through: Mr.Bijendra Singh Methaila, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

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

% **16.02.2024**

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of Criminal Complaint being CC No. 30594/2018 pending before learned Metropolitan Magistrate, Dwarka Court, New Delhi arising out of the proceedings initiated under Section 138 read with Sections 141/142 of the Negotiable Instruments Act (*'NI Act'*).

2. The facts in a nutshell, as discernible from the complaint, are that the petitioner/accused and the respondent/complainant had known each other since 2010. The petitioner, who was facing financial problems, approached the respondent for a friendly loan of Rs.15 lacs. The said loan was provided by way of three instalments. The first instalment of Rs.10 lacs was paid through RTGS on 11.03.2013, the second instalment of Rs.4 lacs was paid in cash somewhere in the last week of March, 2013 whereas the third and last instalment of Rs.1,00,000/- was paid by way of RTGS on 03.06.2016. Pursuant to respondent's request for repayment of the loan, the petitioner issued a cheque bearing No.592902 dated 18.06.2018 drawn on United Bank

of India, Noonmati Branch, Guwahati, Assam for a sum of Rs.15 lacs. The said cheque when presented for encashment, was returned dishonoured vide return memo dated 10.07.2018 with the remarks *'Kindly Contact Drawer'*. Subsequently, the respondent, on the asking of the petitioner, again presented the cheque on 09.07.2018 however, the same was returned dishonoured vide return memo dated 20.07.2018 with the remark *'Kindly Contact Drawer'*. The respondent claims that the said remark amount to *'funds insufficient'*. Consequently, the respondent sent a legal notice dated 28.07.2018 however, the payment was not made within 15 days, resulting in the filing of the complaint case.

3. The petition has been premised on the ground that the cheque issued in favour of the complainant was a security cheque and that the same was not in discharge of any debt or liability which was legally recoverable, as the alleged loan transaction had become time-barred.

4. The issue whether a cheque has been issued as a security, is a matter of trial which needs to be established based upon evidence and the same cannot be considered while exercising power under Section 482 Cr.P.C. Insofar as the second issue is concerned, the language of the provisions of Section 138 stipulates that the debt or liability is legally recoverable. In the present case, the petitioner had requested for a loan of Rs.15 lacs, and the same was paid by way of three instalment, the last one being paid on 03.06.2016. The cheque in question was issued within three years of the last instalment i.e., on 18.06.2018 which, when presented for encashment, was dishonoured. In the facts of the present case, where the cheque in question was issued for the consolidated amount of Rs.15 lacs, the issue whether the debt is time barred would be a matter of trial.

5. Considering the facts and circumstances of the present case, I am of the considered opinion that the present is not a case where this Court should exercise its power under Section 482 Cr.P.C. Accordingly, the petition is dismissed.

6. Needless to state that the observations made herein shall not have any bearing on the outcome of the trial.

MANOJ KUMAR OHRI, J

FEBRUARY 16, 2024

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