



\$~57

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 8692/2023 & CRL.M.A. 32473/2023, CRL.M.A. 32475/2023
M/S URBANAAKRITI PVT LTD & ANR.Petitioners

Through: Appearance not given.

versus
STATE GOVT. OF NCT AND ANR.Respondents
Through: Mr. Yudhvir Singh Chauhan, APP for
the State.
Mr. Jitesh Pandey and Hrishabh
Tiwari, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
24.10.2024

%

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as 'CrPC') (now Section 528 of the BNSS) seeking the following reliefs:

- a) Pass an order of quashing the Ct. Case no. 34901/2019 titled 'Shailja Madan v. M/s Urbanankriti Pvt. Ltd & anr.' qua the e cheque no. 298918 dated 12.02.2019 amounting of rs. 12,50,000/- (rupees twelve lacs and fifty thousand only) drawn on Indusland Bank, Varanasi in interest of jusict;*
b) Pass any other orders necessary in the facts and circumstances of the case.

2. The learned counsel appearing on behalf of the petitioner submitted that the petitioner no.2 and one namely Mr. Rajiv Ranjan developed friendship while they were employed in Zee learn Company, leading to sub-contracting of the work undertaken by the petitioner no.2 and his wife.

3. It is submitted that in lieu of the said sub-contract, the petitioner no.2



gave their letter of authority in order to get more contract through the complainant where they fabricated agreement and created a financial liability on part of the petitioners.

4. It is submitted that the learned Court below erred in issuing summons on the said factual pretext and did not take the entire facts into consideration while doing so.

5. It is submitted that the cognizance on the basis of one cheque bearing no. 298918 is wrong as the said cheque is a post-dated one and was never a part of the notices issued under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter as 'NI Act').

6. In view of the foregoing submissions, it is submitted that the instant petition be allowed and the impugned order be set aside.

7. *Per Contra*, the learned counsel appearing on behalf of the respondent/complainant submitted that the learned Court below considered all the factors while issuing the summoning orders and therefore, the instant petition may be dismissed.

8. The learned APP appearing on behalf of the State also supported the contentions advanced by the learned counsel for the complainant and referred to the impugned order to contend that the impugned orders are legally sound.

9. Heard the learned counsel for the parties and perused the records.

10. In the instant case, the petitioner has filed the present petition on the ground that the learned Court below failed to take into consideration that one of the cheques on which the impugned order was issued is a post-dated cheque where the learned Court below ought not to have taken the cognizance.



11. With regards to the same, this Court deems it appropriate to refer to the recent judgment rendered by the Hon'ble Supreme Court in the case of ***Atamjit Singh v. State (NCT of Delhi) & Anr., 2024 SCC OnLine SC 99***, whereby, it was held that the issue of time barred nature of the underlying debt or liability is a mixed question of law and fact.

12. Furthermore, the Hon'ble Supreme Court and this Court has held in a catena of judgments that the said question may not be decided by the High Courts while exercising the jurisdiction under Section 482 of the CrPC.

13. Therefore, it is apposite to hold that the said questions as raised by the learned counsel for the petitioner are a matter of trial and cannot be answered at the stage of issuance of the summons.

14. The bare perusal of the impugned orders also depicts that the Court concerned has perused all the documents along with complaint as well as the evidence of the complainant on affidavit.

15. It is also well settled that a magistrate is required to peruse the above stated documents and needs to be satisfied that a *prima facie* case is established. Therefore, this Court is of the view that the learned Court below abided by the settled position of law and hence, no case for quashing of the impugned order is made out.

16. In view of the above facts and circumstances the instant petition being bereft of any merit is dismissed, along with pending applications, if any.

CHANDRA DHARI SINGH, J

OCTOBER 24, 2024

Rk/av

[Click here to check corrigendum, if any](#)