



\$~18

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 526/2020 and CRL.M.A. 2205/2020
MULTANI PHARMACEUTICALS LTD.Petitioner
Through: Mr.Bhavnesb Sehgal, Advocate

versus

STATE & ANR.Respondents
Through: Mr. Shoaib Haider, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
26.11.2024

%

1. By way of present petition, the petitioner/complainant seeks to assail the order dated 13.12.2019 passed by Metropolitan Magistrate, Patiala House Court, New Delhi in CC No. 20572/2016 titled as "Multani Pharmaceuticals Ltd. Vs. Sudhakar Tripathi". Vide the impugned order, the Trial Court dismissed the application preferred by the petitioner under Section 311 for sending the signatures of the respondent No.2/accused for forensic analysis.
2. Learned counsel for the petitioner submits that the Trial Court erred in dismissing the application and the impugned order has been passed in a mechanical manner. It is further submitted that forensic analysis of the specimen signatures of the respondent No.2 is vital for proving that he has committed an offence under Section 138 NI Act. learned counsel contends that there is a mismatch between the account number mentioned on the cheque (A/c No. SB12970) and account number mentioned in the signature card and the Account opening form (A/c No. SB12950) and only a forensic



analysis of the signatures of the respondent No.2 would shed a light on whether the mismatch is a result of the respondent No.2 deliberately attempting to avoid his liability.

3. I have heard learned counsel for the petitioner and gone through the records.

4. The petitioner company filed a complaint under Section 138 of the NI act against the respondent No.2 in relation to dishonor of cheque bearing No.390005 dated 06.01.2012 for a sum of Rs. 1,02,950/- (Rupees One Lakh Two Thousand Nine Hundred and Fifty Only). In trial, respondent No.2 took the defence that the cheque in question was not issued by him and the same did not pertain to his account. In this regard, Respondent No.2 has examined officials from *Dena Bank*. *Sh. Harender Singh*, an officer of *Dena Bank* was examined as DW-1 and during his deposition, he put on record the details of account number, the subject cheque, the Customer Relationship Form, the Customer profile form, the account opening ID and Signature Card. Thereafter, the petitioner preferred an application under Section 311 Cr.P.C. seeking to send handwriting specimen of respondent No. 2 for forensic analysis which came to be rejected by the Trial Court vide the impugned order, by observing that considering the reason for default of the cheque and that other ingredients of Section 138 remained to be proved, no ground was made out for sending the samples for handwriting analysis.

5. A perusal of the complaint would show that cheque in question came to be dishonored for the reason that “TODAY OPENING BALANCE INSUFFICIENT.” The reason for dishonor is not due to a handwriting mismatch or discrepancy. There is also not a whisper in the complaint alleging any mischief in the signatures. Moreover, the respondent No.2 has



examined a bank official to prove that the cheque in question was, in fact issued from an account belonging to one *Ram Kumar Singh* and not from the account held and maintained by respondent No.2. In this regard, a letter dated 04.11.2019 was exhibited as DW1/A and the same reads as under :-

“Re: Regarding details of A/c No 050010004483, Cheque no 390005 dated 06.01.2012

We are in receipt of notice of your court regarding details of A/c no 050010004483 Cheque No. 390005 dated 06.01.2012 for amount of Rs.102950/- in the case no 20572/16 under section 138 NI Act – Multani Pharmaceuticals Pvt. Ltd. V/s Sudhakar Tripathi.

As per notice we are required to appear in person or by pleader in your court on 08.11.2019.

Accordingly, in compliance of the notice we are submitting the required details through our council Mr.Harvinder Singh as under-

- 1. Dena Bank has been amalgamated with Bank of Baroda w.e.f. 01.04.2019 as per gazette of Govt. of India.*
- 2. The account no. 050010004483 is in name of Mr. Ram Kumar Singh R/o 118A, Teliarganj, Allahabad. (certified copy of Account Opening Form is enclosed)*
- 3. We are also enclosing Statement of account no. 050010004483 from 06.09.2008 to 04.11.2019 (record available with us), which shows that the account is not operative since 2008.*
- 4. The cheque no. 390005 was issued in account no 050010004483 of Mr. Ram Kumar Singh.”*

4. It is well settled that in order to constitute an offence under Section 138 NI Act, the essential ingredients that need to be met are three-fold; *firstly*, the person sought to be made an accused must have drawn the



cheque; *secondly*, the cheque must have been drawn towards discharge of any debt or liability, in whole or in part; and *thirdly*, the cheque has to be returned unpaid. If any of these conditions are not satisfied, no action can lie under Section 138 NI Act. [Ref: MSR Leathers v. S. Palaniappan & Anr., reported as (2013) 1 SCC 177, Charanjit Pal Jindal v. L.N. Metalics, reported as (2015) 15 SCC 768 and N. Harihara Krishnan v. J. Thomas, reported as (2018) 13 SCC 663.]

Pertinently, the very first precondition for prosecution under Section 138 NI Act is that the accused has to draw the subject cheque on an account maintained by him. In the present case, the accused respondent No.2 has led evidence to show that the cheque is drawn on an account which does not belong to him. A handwriting analysis being conducted on the signatures on the cheque, even if positive, would not fulfil this precondition. Presuming the signatures on the cheque are proved to belong to the respondent No.2, the cheque would still not have been drawn on an account maintained by him. This would render the whole exercise of sending the handwriting specimen of respondent No.2 for forensic analysis meaningless in the context of a complaint under Section 138 of the NI Act. Notably, there are no allegations that the respondent has signed a cheque not belonging to him.

5. In view of the above, this Court concurs with the Trial Court that no forensic examination of the signatures on the cheque is required. Accordingly, the present petition is dismissed alongwith the pending application.

MANOJ KUMAR OHRI, J

NOVEMBER 26, 2024

na