



\$~34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2317/2023 and CRL.M.A. 8729/2023

K SUDARSHAN & ORS. Petitioners
Through: Mr.Vikrant Bhardwaj, Advocate

versus

RACHNA SAGAR PVT LTD Respondent
Through: Mr.Gaurav Kochhar, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
% **13.05.2024**

1. The present petition has been instituted under Section 482 Cr.P.C., seeking quashing of the summoning order dated 25.01.2020 passed by the learned MM-01 (NI Act), Tis Hazari Court, Delhi in C.C. No.1374/2020 titled as 'Rachna Sagar Pvt. Ltd. vs K. Sudarshan & Ors.' instituted under Section 138 of NI Act as well as the aforesaid complaint case.
2. The facts, as discernible from the record, are that in the underlying criminal complaint, the complainant/respondent has alleged that it is a publishing house engaged in the business of publishing various school and competition books. It is alleged that the petitioners/accused approached the respondent and requested it to provide school books for their book store and the same was provided by it. Towards discharge of their liability, the petitioners issued two cheques bearing No.518446 for Rs.7,00,000/- and another cheque bearing No.000889 for Rs.6,40,920/- (hereinafter, '*subject cheques*'), totaling to Rs.13,40,920/-. The said cheques when presented for encashment, were dishonoured with the remarks 'funds insufficient' &



‘exceeds arrangements’ respectively vide return memos both dated 04.12.2019. A common demand notice dated 12.12.2019 was issued by the respondent, however, upon petitioners’ failure to repay the amount due under the subject cheques, the subject complaint came to be filed qua both the cheques.

3. Learned counsel for the petitioners has assailed the summoning order for non-application of mind. In this regard while inviting attention of the court to the criminal complaint, it is submitted that it was complainant’s own case that the accused no. 04 was a preceptorship firm of which accused no. 01 is the proprietor and accused no. 02 and 03 were the authorized signatories. It is contended that the two subjects were issued by two different firms namely ‘The SKB Book Shop’ and ‘SKB Book Shop’ having two different proprietors. It is further contended that petitioner No.2/*K.M. Vittal Babu* neither has any concern with either of the firms nor is he the signatory of either of the subject cheques.

Additionally, it is contended that the complainant’s ledger filed with the complaint would show that after issuance of legal notice on 12.12.2019, the complainant had received a sum of Rs.2,00,000/- from the petitioners/accused and still the criminal complaint was filed for non-payment of the entire amount of Rs.13,40,920/-.

4. Learned counsel for the respondent submitted that the respondent has maintained only one ledger balance and was never made aware of the minute difference between ‘The SKB Book Shop’ and ‘SKB Book Shop’. He submits that all the accused persons were representing the accused firm i.e., ‘The SKB Book Shop’. At the same time, learned counsel for the respondent, on instructions, concedes that the summoning order against



petitioner No.2 needs to be quashed.

5. I have heard learned counsel for parties and have also gone through the relevant record as well as the summoning order which reads as under:

“There are sufficient grounds for proceeding further against accused no.01 which is company/partnership concern and accused no. 01 to 03 who are the directors/partners of accused no, 01 as per documents furnished by the complainant”.

6. Summoning of an accused in a criminal case is a serious matter.¹ Further, a perusal of the above would show that while the complainant claims one of the accused (petitioner No.4 herein) to be a proprietorship firm and others [(petitioner Nos. 1-3 herein) to be its proprietor/authorised signatories, the impugned order proceeds on the assumption that petitioner No.4 was a partnership concern/company and the others were its Directors/partners.

7. Without further going into the merits of contentions, this Court deems it apposite if the summoning order is set aside, with the further direction to consider the aspect of summoning afresh. Needless to state that the complainant has already conceded that the complaint and the summoning order against petitioner No.2 should be set aside.

8. The petition is disposed of in above terms.

9. It is clarified that this Court has not expressed any opinion on the merits of the contentions or the case.

MANOJ KUMAR OHRI, J

MAY 13, 2024/na

¹ Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749