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

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Date of Decision: 11th March, 2024+ **CRL.M.C. 1978/2024****A&A AUTOMOBILES PRIVATE LIMITED** PetitionerThrough: Mr. J.P. Sengh, Senior Advocate with
Ms. Sana Ansari, Mr. Shashank Agarwal and
Ms. Latima Ghosh, Advocates

versus

STATE AND ANR RespondentsThrough: Mr. Digam Singh Dagar, APP for
State.Mr. J.H. Jafri and Ms. Jyotsana Singh, Advocates
for R-2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****CRL.M.A. 7597/2024 (exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 1978/2024 & CRL.M.A. 7596/2024 (stay)

3. This petition has been filed under Section 482 Cr.P.C. on behalf of the Petitioner seeking setting aside of the impugned order dated 28.02.2024 passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi in CC No.7722/2020 titled '*Girdhar Impex Limited v. A&A Automobiles Private Limited*'. Petitioner Company along with its Authorized Signatory and two Directors were the Accused and Respondent No.2 was



the Complainant before the Trial Court and parties are hereinafter referred to by their litigating status before this Court.

4. Issue notice.
5. Learned APP accepts notice on behalf of the State.
6. Mr. J.H. Jafri, learned counsel accepts notice on behalf of Respondent No.2/Complainant.
7. Facts to the extent relevant are that Petitioner is a private limited company registered under the Companies Act, 1956. Respondent No. 2 is also a private limited company registered under the said Act. As per the Petitioner, Respondent No. 2 held out in business market that it was owner of property bearing Plot No. E-7, Sector-63, Noida District, Gautam Budh Nagar, U.P. Petitioner was on a look out for premises to run a service centre and approached Respondent No. 2 and finally, a lease deed was entered into between the parties on 15.11.2019. In terms of the lease deed, Petitioner handed over security cheques towards payment of rent.
8. Petitioner avers that till March, 2020, Petitioner made regular payments of rent but thereafter Respondent No. 2 did not secure a rent permission in favour of the Petitioner, which was its obligation under the lease deed. Petitioner later learnt that Respondent No. 2 was required to obtain prior rent permission from the Noida Authority in writing, for sub-letting the premises to the Petitioner, which it had failed to do. Noida Authority sent notices to Respondent No. 2 for breach of the terms of the lease deed entered into between the Noida Authority and Respondent No. 2 as to why the premises should not be sealed. On learning of the fraud played by Respondent No. 2, Petitioner stopped payment for the rent cheques for four months i.e. April to July, 2022 as there was no legally enforceable debt.



9. It is stated that Respondent No. 2 filed a complaint under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 ('NI Act') on dishonour of the four cheques. Evidence was led by both the parties and the matter was fixed for final arguments. According to the Petitioner, at this stage, it was realized that bank witnesses were dropped by the Respondent No.2 after the Statement of Accused persons were recorded under Section 294 Cr.P.C. In order to prove its case that the bank account of the Company has sufficient funds, Petitioner filed an application under Section 311 Cr.P.C. read with Section 91 Cr.P.C. seeking leave of the Court to summon bank officials along with record pertaining to the concerned bank account for the financial years 2019-2020 and 2020-2021. The application was dismissed by the learned MM vide order dated 28.02.2024 leading to filing of the present petition assailing the said order.

10. Mr. J.P. Sengh, learned Senior Counsel appearing on behalf of the Petitioner states that as per Section 138 of the NI Act, the liability of the Petitioner would arise only when the cheques issued by the accused are dishonoured either because the amount of money standing to the credit of that account is insufficient to honour the cheques or exceeds the arrangement. Therefore, it is important for the Petitioner to prove that the cheques in question were not dishonoured for either of the two reasons and the only reason for dishonour was that Petitioner had given instructions to stop the payment on account of ongoing dispute with Respondent No.2. The learned MM has, therefore, erred in dismissing the application and has prevented the accused from examining the bank officials of Punjab National Bank, which would be detrimental to the defence of the Accused. It is thus prayed that the impugned order be set aside and the application filed under



Section 311 Cr.P.C. be allowed, permitting the Petitioner to examine the bank officials of Punjab National Bank and to produce financial statements for the years in question.

11. Learned counsel for Respondent No.2, responding to the argument of the Petitioner, states that Petitioner is misreading the impugned order. Learned MM has clearly recorded in the order, while referring to the Bank return memos as well as evidence tendered by CW-1 that the reason for dishonour of the cheques in question was 'payment stopped' by the drawer and that it is not the case of Respondent No.2 that the cheques were dishonoured on account of 'insufficiency of funds' or on account of 'exceeding arrangement' and therefore, the application under Section 311 Cr.P.C. was misconceived and only a delay tactic to prolong the trial. Learned counsel further submits that to cut short the controversy and in the interest of expeditious trial, he reiterates, on instructions, that the cheques in question were not dishonoured on account of 'insufficiency of funds' or on account of 'exceeding arrangement' and that Petitioner had sufficient funds in the account in question.

12. I have heard learned Senior Counsel for the Petitioner, learned counsel for Respondent No.2 as well as learned APP for the State.

13. After hearing and perusing the impugned order, this Court finds merit in the contention of Respondent No.2. The singular reason for filing an application under Section 311 Cr.P.C. by the Petitioner was to prove through the bank officials and the financial statements that there were sufficient funds in the bank account pertaining to which the dishonoured cheques were issued, so as to set up a defence against the alleged offence under Section 138 of the NI Act. As rightly pointed out by counsel for Respondent No. 2,



learned MM has noted in the impugned order itself that the dishonour of cheques was not on account of insufficiency of funds or exceeding arrangement. In fact, the learned Court has categorically noted, after referring to bank return memos Exs. CW-1/8, CW-1/9, CW-1/10 and CW-1/11 and the evidence of Respondent No.2's witness CW-1 that reason for dishonour of the cheques in question was 'payment stopped by drawer'. The Court has further observed that *"The factum of dishonour of the cheques in question on account of payment being stopped by the drawer is an admitted position between the parties and hence there is no requirement for summoning the bank witness for proving the said fact by either of the parties...."* and that *"it is not the case of the complainant that the said cheques were dishonoured on account of insufficiency of funds or on account of exceeding arrangement"*.

14. In view of the aforesaid, the apprehension of the Petitioner is misplaced and no infirmity is found with the impugned order, warranting interference by this Court. Moreover, Respondent No. 2 has reiterated its stand that the funds maintained by the Company/accused were neither insufficient nor the amounts under the impugned cheques exceeded arrangement. In view of this, no further order is required to be passed and the petition is accordingly disposed of along with pending application.

JYOTI SINGH, J

MARCH 11, 2024/kks/shivam