



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

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Date of Decision: 12.03.2024

+ **CRL.M.C. 2006/2024, CRL.M.A. 7738/2024, CRL.M.A. 7739/2024**

BHAI MANJIT SINGH

..... Petitioner

Through: Mr. Karan Singh Khanuja, Mr. B.
Badrinath and Mr. Pushpendra,
Advocates.

versus

RADHIKA CHOWDHURY (DECEASED) THR. LRS Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. Present petition has been instituted under Section 482 Cr.P.C. seeking setting aside of order dated 07.06.2023 passed by the learned ASJ, Patiala House Court, New Delhi in CRL.REV.P. 207/2023 wherein his challenge to the summoning order issued against him in Complaint Case No. 1610/2023 (1887/SS/2021) initiated under Section 138 of the Negotiable Instrument Act, 1881 (for short, '*NI Act*') came to be dismissed. At the outset, it is noted that the original complainant namely *Radhika Chowdhry* has since expired and the proceedings are being continued against her legal representatives.

2. Notably, the aforementioned criminal complaint was initially filed before the Metropolitan Magistrate, Andheri, Mumbai. However, the same was subsequently transferred to Delhi in terms of the direction of Supreme Court passed in Transfer Petition (Crl.) No. 646-647/2022 tilted '*Radhika Chowdhry vs Bhai Manjit Singh & Anr. etc.*'

3. The present petition is premised on the ground that the learned



Magistrate has passed the impugned order mechanically without applying judicial mind to the facts of the case. It is contended that the petitioner has no liability to discharge inasmuch as there was no transaction between the parties. It has been stated that the petitioner had not issued any cheque in favour of the respondent/complainant. Rather the subject cheque bearing No.066576 was misplaced and an intimation in this regard was also given by the petitioner to the concerned Branch Manager, Punjab National Bank, Khan Market. It is further contended that the said account was closed in late July, 2020. It is also averred that a complaint was also made with the SHO, P.S. Tughlaq Road regarding missing of the subject cheque as well as three other cheques.

4. Complainant/Respondent had filed the complaint alleging that she had advanced loan of Rs.2 lacs to the petitioner, which was duly encashed by the petitioner. It was further alleged that the petitioner was introduced to her by an advocate and her late husband's business partner *Mr. Parminder Singh Kalra*. After the death of her husband, *Mr. Kalra* committed fraud and embezzled money belonging to her husband. The loan is stated to have been given on the pretext of paying debts. The respondent was further promised that the said amount would be returned within three months with interest @ 10%. It is also the case of the respondent that petitioner has not denied his signatures or handwriting on the cheque but has denied issuance of subject cheque to the respondent.

5. From the material placed on record, it is discernible that the subject cheque was presented for encashment and was dishonoured with the remarks '*account closed*'. The complaint is accompanied by the subject cheque as well as the return memo. At this stage, the presumption under Section 118



and 139 of the NI Act is available to the complainant/respondent, which of course is rebuttable. The Supreme Court in Bir Singh v. Mukesh Kumar¹, while dealing with the presumption under Section 139 NI Act observed:-

“xxx

20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in Hiten P. Dalal.

xxx

32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

xxx”

6. In the present case, the petitioner has raised a defence that the subject cheque was never issued by him but rather stolen. However, the same is a ground/contention which would require trial and proving with the aid of material evidence. The same cannot be considered at the stage of Section 482 Cr.P.C. Reference in this regard can be made to the decision of a

¹ (2019) 4 SCC 197



Coordinate Bench of this Court in Ascent Construction Pvt. Ltd. & Anr. v. Mohan Bhatt Prop. Of M/s Al-Max (India)², wherein it has been observed:-

“xxx

11. As per the petitioners' own case, the cheques were signed by the petitioner, though according to them, the same have been stolen by their accountant Ms. Renu Gupta and a report to that effect has already been lodged with police. It is a matter of evidence to be gone into by the trial court as to whether the cheques have been stolen by the accountant of the petitioners as alleged and whether those cheques were handed over to the respondent by the accountant. All these matters are yet to be gone into by the trial court during the course of evidence and it is the defence of the petitioners, which they have to prove in the court during the course of trial, in accordance with law.

xxx”

7. Considering the abovementioned factual matrix and legal position, this Court is of the considered opinion that the contention raised by the petitioner i.e. the subject cheque alongwith 3 other cheques having being stolen is something which requires appreciation of evidence. Though the petitioner has stated that he had intimated the concerned Branch Manager and had also filed a complaint with SHO P.S. Tughlaq Road about the theft of such cheques, the petitioner would have ample opportunity to lead evidence and prove the same before the concerned trial court.

8. Consequently, the petition is dismissed. Pending applications are disposed of as infructuous.

**MANOJ KUMAR OHRI
(JUDGE)**

² 2007 SCC OnLine Del 1682



2024 : DHC : 2380



MARCH 12, 2024/ga

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CRL.M.C. 2006/2024

Page 5 of 5