



2024:DHC:7630



\$~94 to 108

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

Date of decision: 11th SEPTEMBER, 2024

IN THE MATTER OF:

+ CRL.M.C. 1135/2020 & CRL.M.As. 4437/2020, 27586/2024

GEETA GUPTA

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1141/2020 & CRL.M.As. 4451/2020, 27592/2024

(95) GEETA GUPTA

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1142/2020 & CRL.M.As. 4453/2020, 27449/2024

(96) GEETA GUTPA

.....Petitioner



2024:DHC:7630



Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1143/2020 & CRL.M.As. 4455/2020, 27450/2024

(97) GEETA GUPTAPetitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1144/2020 & CRL.M.As. 4457/2020, 27590/2024

(98) GEETA GUPTAPetitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent



2024:DHC:7630



Through: Mr. Amit Chadha, Mr. Kamal Bahl,
Mr. Sarthak Sethi and Mr. Harjas
Singh, Advocates.

+ CRL.M.C. 1145/2020 & CRL.M.As. 4459/2020, 27600/2024

(99) GEETA GUPTA

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar
Randhawa, Ms. Vaishnavi Jha, Mr.
Rahul Sharma, Mr. Sanjeev Sharma,
Ms. Nandini Singh Randhawa and
Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl,
Mr. Sarthak Sethi and Mr. Harjas
Singh, Advocates.

+ CRL.M.C. 1146/2020 & CRL.M.As. 4461/2020, 27448/2024

(100) GEETA GUPTA

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar
Randhawa, Ms. Vaishnavi Jha, Mr.
Rahul Sharma, Mr. Sanjeev Sharma,
Ms. Nandini Singh Randhawa and
Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl,
Mr. Sarthak Sethi and Mr. Harjas
Singh, Advocates.

+ CRL.M.C. 1153/2020 & CRL.M.As. 4488/2020, 27597/202

(101) GEETA GUPTA

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar



2024:DHC:7630



Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent
Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1898/2022 & CRL.M.A. 8086/2022

(102) RAKESH KUMARPetitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent
Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1899/2022 & CRL.M.A. 8088/2022

(103) RAKESH KUMARPetitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent
Through: Mr. Amit Chadha, Mr. Kamal Bahl,



2024:DHC:7630



Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1902/2022 & CRL.M.A. 8092/2022

(104) RAKESH KUMAR

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.

.....Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1917/2022 & CRL.M.A. 8189/2022

(105) RAKESH KUMAR

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.

.....Respondent

Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1918/2022 & CRL.M.A. 8191/2022

(106) RAKESH KUMAR

.....Petitioner

Through: Mr. Rudra Pratap, Mr. Tushar



2024:DHC:7630



Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent
Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1939/2022 & CRL.M.A. 8260/2022

(107) RAKESH KUMARPetitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent
Through: Mr. Amit Chadha, Mr. Kamal Bahl, Mr. Sarthak Sethi and Mr. Harjas Singh, Advocates.

+ CRL.M.C. 1940/2022 & CRL.M.A. 8264/2022

(108) RAKESH KUMARPetitioner

Through: Mr. Rudra Pratap, Mr. Tushar Randhawa, Ms. Vaishnavi Jha, Mr. Rahul Sharma, Mr. Sanjeev Sharma, Ms. Nandini Singh Randhawa and Mr. Mohit Singh, Advocates.

versus

M/S NIVEDAN FIN INVEST LEASE LTD.Respondent
Through: Mr. Amit Chadha, Mr. Kamal Bahl,



2024:DHC:7630



Mr. Sarthak Sethi and Mr. Harjas
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Petitioners have approached this Court seeking quashing of complaints filed against them for offences under Section 138 of the NI Act.
2. The facts of the case reveals that Rakesh Kumar, i.e Petitioner in CRL.M.C. 1898/2022, CRL.M.C. 1899/2022, CRL.M.C. 1902/2022, CRL.M.C. 1917/2022, CRL.M.C. 1918/2022, CRL.M.C. 1939/2022 and CRL.M.C. 1940/2022 took loan of Rs.1,50,00,000/- from the Respondent herein, which is a Non-Banking Financial Company. It is stated that the Petitioner in CRL.M.C. 1135/2020, CRL.M.C. 1141/2020, CRL.M.C. 1142/2020, CRL.M.C. 1143/2020, CRL.M.C. 1144/2020, CRL.M.C. 1145/2020 , CRL.M.C. 1146/2020 & CRL.M.C. 1153/2020, i.e. Geeta Gupta is the wife of Rakesh Kumar and she stood as guarantor to the said loan. It is stated that towards repayment of the said amount, the Petitioners herein issued 15 cheques to the Respondent herein (eight cheques signed by Geeta Gupta and 7 cheques signed by Rakesh Kumar). It is stated that the said cheques were dishonoured with remark "account blocked". On dishonour of the said cheques, statutory notices were issued by the Respondent herein and since the Petitioners have failed to repay the loan amount even after receiving the notice, the Respondent herein filed complaints against the Petitioners herein under Section 138 NI Act. Summoning Orders have been issued against the Petitioners.
3. Petitioners have approached this Court seeking quashing of the complaints and all the proceedings emanating therefrom.



2024:DHC:7630



4. It is stated by the learned Counsel for the Petitioners that since the Petitioners reside outside the jurisdiction of the Magistrate, an enquiry ought to have been conducted by the Magistrate under Section 202 Cr.P.C and without conducting the enquiry under Section 202 Cr.P.C summons could not have been issued against the Petitioners.

5. At this juncture, it is pertinent to reproduce Section 202 Cr.P.C and the same reads as under:

“Section 202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.



2024:DHC:7630



(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

6. The issue raised by the Petitioners in the present Petitions is no longer res-integra and has been answered by the Apex Court in its judgement in Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116, wherein the Apex Court has held as under:

“10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-6-2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See : Vijay Dhanuka v. Najima Mamtaj [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , Abhijit Pawar v. Hemant Madhukar Nimbalkar [Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828]) There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under



2024:DHC:7630



Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

11. The learned Amici Curiae referred to a judgment of this Court in K.S. Joseph v. Philips Carbon Black Ltd. [K.S. Joseph v. Philips Carbon Black Ltd., (2016) 11 SCC 105 : (2016) 4 SCC (Civ) 616 : (2017) 1 SCC (Cri) 270] where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in Vijay Dhanuka [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , Abhijit Pawar [Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and Birla Corpn. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828] , the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici Curiae.

12. Another point that has been brought to our notice relates to the interpretation of Section 202(2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section



2024:DHC:7630



202(1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145(2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202(2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202(2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate



2024:DHC:7630



can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.

24. The upshot of the above discussion leads us to the following conclusions:

24.1. The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

24.2. Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court....”

7. Applying the law laid down by the Apex Court, this Court is of the opinion that while issuing summons the Magistrate has not conducted any enquiry as required under Section 202 Cr.P.C. The Apex Court has held that some kind of enquiry has to be conducted by the Magistrate before issuance of summons.

8. In view of the above, this Court is inclined to set aside the Orders issuing summons in the present matters and remand the matters back to the concerned Magistrates to proceed further in accordance with the law laid down by the Apex Court in Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (supra)

9. With these directions, the Petitions are disposed of along with the pending applications.

10. Since these Complaints are of 2018, the Magistrate is requested to



2024:DHC:7630



proceed further as expeditiously as possible.

SUBRAMONIUM PRASAD, J

SEPTEMBER 11, 2024

Rahul

Signature Not Verified

Digitally Signed By: HARIOM
SINGH KIRMOJIYA
Signing Date: 03.10.2024
16:56:49

CRL.M.C. 1135/2020 etc.

Page 13 of 13