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

\+ CRL.M.C. 1587/2022 & CRL.M.A. 6812/2022

VIKRAM MALHOTRA .....Petitioner

Through: Mr. Chandan Bhatia and Mr. Talib, Advocates.

versus

STATE & ANR. .....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Keshav Saini, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

O R D E R

% **16.08.2024**

1. The Petitioner has approached this Court challenging an Order dated 09.01.2020 passed by the learned Metropolitan Magistrate issuing summons to the Petitioner primarily on the ground that successive legal notices have been issued by the Respondent.

2. It is stated by learned Counsel for the Petitioner that once a cheque is deposited and is returned and if a legal notice is issued, then the cheque cannot be re-presented again making out a fresh cause of action and a complaint on the basis of second legal notice is not maintainable.

3. Learned Counsel appearing for Respondent No.2 states that the question raised by the Petitioner is no longer *res integra* and has been dealt with by the Bench of Three Judges of the Apex Court in MSR Leathers v. S Palaniappan & Anr., **(2013) 1 SCC 177,** wherein it was held that each time a cheque is dishonoured, it amounts to a fresh cause of action. The Apex Court in the said Judgment has observed as under:

*"**29.** It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations, giving credibility to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. [(2006) 3 SCC 658 : (2006) 2 SCC (Cri) 98] , C.C. Alavi Haji v. Palapetty Muhammed [(2007) 6 SCC 555 : (2007) 3 SCC (Cri) 236] and Damodar S. Prabhu v. Sayed Babalal H. [(2010) 5 SCC 663 : (2010) 2 SCC (Civ) 520 : (2010) 2 SCC (Cri) 1328] , SCC pp. 665-66, para 3) Having said that, we must add that one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognised purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. We may only refer to the decision of this Court in New India Sugar Mills Ltd. v. CST [AIR 1963 SC 1207] , wherein this Court observed: (AIR p. 1213, para 8)*

> *"8. ... It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they*

best harmonise with the object of the statute, and which effectuate the object of the legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid."

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***33.** Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.*

4. In this view of the matter, this Court is not inclined to interfere with the order of summons. However, since the dishonor of cheque was only on the endorsement of connectivity failure, it is always open for the Petitioner to establish before the Court that there were funds available in the bank account on the day when the cheque was dishonoured. The Petitioner can also raise other contentions available to him under Section 138 of the NI Act.

5. It is made clear that this Court has not made any observation on the merits of the case and on the other aspects of Section 138 of the NI Act.

6. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 16, 2024
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