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

Date of decision: 13.03.2024

(10)+ CRL.M.C. 409/2022 & CRL.M.A. 1876/2022

(11)+ CRL.M.C. 1973/2022 & CRL.M.A. 8385/2022

(12)+ CRL.M.C. 2326/2022 & CRL.M.A. 9833/2022

M/S SUNSHINE INFRAHEIGHTS PVT LTD & ORS.

..... Petitioner

Through: Mr.Sahil Yadav, Adv.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Satinder Singh Bawa, APP.

Ms.Gunjan Mittal, Adv. for R-
2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed under Section 482 of the Criminal Procedure Code, 1973 (in short, 'Cr.P.C.') challenging the Order dated 26.08.2019 passed by the learned Metropolitan Magistrate (NI Act), East District, Karkardooma Courts, Delhi in the Complaint Cases, being CC No. 4692/2018, titled ***Dr.Monika Gupta v. Sunshine Infra Heights Pvt. Ltd. & Ors.*** (in CRL.M.C. 409/2022); and CC No. 4947/2018, titled ***Anubhuti Agarwal v. Sunshine Infraheights & Ors.*** (in CRL.M.C. 2326/2022); and Order dated 08.04.2019 passed by learned Metropolitan Magistrate, East District, Karkardooma Courts, Delhi in the Complaint Case, being CC No.4736/2018, titled



Janardan Gupta v. Sunshine Infraheights Pvt. Ltd. (in CRL.M.C. 1973/2022), summoning the petitioners as accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the ‘NI Act’). The petitioners also seek quashing of the said Complaint Cases.

2. As the petitions arise out of similar factual background and as similar submissions have been made by the learned counsels for the parties in all these petitions, these petitions are being disposed of by this common judgment.

3. The said complaint cases have been filed by the complainants alleging therein that based on the representation of the accused, the complainants had agreed to invest in the plot bearing no.D-98, 97, and 100 respectively, all ad-measuring 200 sq. meters, at Silver Lune Urbe Village, Maliana, District Meerut, Uttar Pradesh, by purchasing the same from the accused company vide Sale Deeds dated 31.07.2015 for a total sale consideration of Rs.12,60,000/- each. Thereafter, the accused persons, on a false promise, made the complainants to execute Buy Back Agreements dated 20.10.2015, whereunder they undertook to pay a sum of Rs.40 lacs alongwith interest at the rate of 24% per annum to each of the complainants till the registration of the Sale Deed of the said plot in their favour. The accused persons also handed over a cheque for a sum of Rs.40 lacs to each of the complainants, which are the subject matter of the complaints. It is further stated that the said cheques, on their presentation, were returned dishonoured with the remark “funds insufficient”, on 25.09.2018. The complainants issued Demand Notices dated 01.10.2018, 06.10.2018



and 05.10.2018 respectively, to the accused, however, they failed to make any payment.

4. By the Impugned Orders dated 26.08.2019 and 08.04.2019, the learned Trial Court(s) has taken cognizance of the offence punishable under Section 138 of the NI Act and summoned the accused persons.

5. The learned counsel for the petitioners submits that in terms of the Buy Back Agreements, the liability of the accused company to pay an amount of Rs.40 lacs would arise only after the expiry of 36 months from the execution of the Agreement dated 20.10.2015, that is, on or after 19.10.2018. He submits that, admittedly, the cheque in question was presented for encashment by the complainants on 25.09.2018, that is, prior to the liability to pay the said amount arising against the accused company in terms of the Buy Back Agreements. He submits that even the legal notices were sent prior to the liability arising against the accused company in terms of the Buy Back Agreements, therefore, the complaints are liable to be dismissed.

6. On the other hand, the learned counsel for the respondent no.2 submits that the cheques in question were dated 24.09.2018, and this date was filled by the accused persons themselves. She submits that therefore, the cheques in question would become payable on or after the date on the said cheque. She submits that merely because in the Buy Back Agreements it was mentioned that the liability to return Rs.40 lacs will arise after 36 months from the execution of the agreement, would not make any difference to the case inasmuch as the cheques have been handed over by the accused persons themselves to the complainants with a particular date mentioned therein, and



admittedly the said cheques have been returned dishonoured upon presentation and payment thereagainst has not been made by the accused in spite of the notices from the complainants.

7. I have considered the submissions made by the learned counsels for the parties.

8. It is to be kept in mind that at the stage of issuing process, the learned Trial Court is mainly concerned with the allegations made in the complaint and the evidence led in support of the same. The learned Trial Court is only to be *prima facie* satisfied that there are sufficient grounds for proceeding against the accused person(s). The learned Trial Court is not even required to record the reasons while issuing the process. At this stage, it is not the province of the learned Trial Court to enter into a detailed discussion/analysis on the merits or demerits of the case. Reference in this regard is made to the judgments of the Supreme Court in **UP Pollution Control Board v. Mohan Meakins Ltd. & Ors.**, (2000) 3 SCC 745 and **Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.**, (2012) 5 SCC 424.

9. Presently, it is not denied by the learned counsel for the petitioners that the date mentioned in the cheques has been written by the accused company. Why the date of 24.09.2018 was written on the cheques, when as per the Agreement the amount would become payable only after 36 months from the date of the execution of the Buy Back Agreements, would require examination of evidence led by the parties on this issue. Presently, it cannot be said that only for the above reason, the complaint(s) is not maintainable or that the summoning order suffers from any illegality.



10. Exercise of powers by the High Court under Section 482 of the Cr.P.C. is limited in its scope and can be exercised only where the Court is fully satisfied that the material produced would irrefutably rule out the charge and is of such sterling and impeccable quality that the invocation of powers under Section 482 of the Cr.P.C. to quash the criminal proceedings is warranted. Reference is placed on the judgments of the Supreme Court in *Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.*, (1976) 3 SCC 736; *HMT Watches Ltd. v. M.A. Abida & Anr.* (2015) 11 SCC 776; *Rajiv Thapar & Ors. v. Madan Lal Kapoor* (2013) 3 SCC 330; and, *Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) & Anr.* 2022 SCC OnLine SC 513

11. In the *State of Haryana & Ors. v. Bhajan Lal & Ors.* 1992 Supp (1) SCC 335, the Supreme Court has cautioned that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection, and that too, in the rarest of rare cases; and that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint.

12. In my opinion, the present is not one of those cases which warrants exercise of the inherent powers of this Court, at this stage, to quash the Complaint Case(s) filed by the respondents.

13. Keeping in view the above, I find no merit in the present petitions. The same along with the pending applications are, accordingly, dismissed.

14. It is made clear that any observations made in the present



judgment, shall in no manner prejudice either of the parties in the trial of the above complaint case(s).

15. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 13, 2024/Arya/AS

Click here to check corrigendum, if any