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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3262/2023, CRL.M.A. 12221/2023**

ARUN KUMAR KHAITAN

..... Petitioner

Through: Mr. Sameer Gupta, Mr. Aayushman
Aeron, Mr. Divyanshu Shekhar,

versus

M/S DELTON CABLES LIMITED

..... Respondent

Through: Mr. Mayank Sharma, Mr. Rajiv
Kumar Trivedi and Mr. Anshul
Kulshresta, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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08.01.2024

1. By way of present petition filed under Section 482 Cr.P.C., petitioner seeks quashing of Complaint Case No. 2956 of 2021 titled as *Delton Cables Limited vs. Arun Kumar Khaitan* as well as of order dated 12.12.2022 passed by the Metropolitan Magistrate, NI Digital Court – 02, Patiala House Court, New Delhi whereby petitioner has been summoned.
2. Briefly, the subject complaint relates to dishonour of cheques dated 03.02.2021 and 28.02.2021 bearing Nos. 000014 and 000020 for an amount of Rs.5,73,020/- and Rs.15,66,500 respectively (totaling of Rs.21,39,520/-), both drawn on HDFC Bank, Shah House, Kolkata, West Bengal. In the complaint, it is stated that the complainant company was engaged in the business of manufacturing wires, cables and switchgears. Petitioner approached the complainant and placed a purchase order against which complainant supplied requisite material and raised invoices for a total sum



of Rs.21,39,520/-. Petitioner issued the aforementioned cheques towards the said liability. Admittedly, before the respondent could present the said cheques for encashment, the petitioner made part payment of Rs.2 lacs on 15.03.2021 through NEFT. The impugned cheques were presented for encashment on 09.04.2021 however the same were dishonoured vide return memo dated 12.04.2021 with the remarks “funds insufficient”. A demand notice dated 06.05.2021 was issued by the respondent to the petitioner for payment of balance due amount. As the petitioner failed to pay the demanded amount, the respondent filed the subject complaint under Section 138 of the N.I. Act, 1881 (hereinafter, the Act).

3. The issue raised in the present petition is whether in case a part payment prior to the presentation of the cheque for encashment is made, the cheque could be presented for the entire amount or for remaining balance amount. In other words, in case the part payment is made, the amount written on the cheque would not represent the legally enforceable debt and thus making the person not liable for the offence under Section 138 of the Act. The present issue pertains to Section 56 of the Act which requires endorsement of part payment of the debt to be recorded on the cheque or a note appended to it. The liability of the person arises only when the cheque presented for encashment for the balance amount is dishonoured and when a cheque is presented without endorsement, the liability under Section 138 NI Act is not attracted.¹

4. Concededly, respondent admits to be in receipt of Rs.2 lacs towards the part payment of the debt and despite that, no enforcement was carried

¹ Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Ors. 2023 (1) SCC 578



out in terms of Section 56 of the Act. The impugned cheques were presented for the entire sum of Rs.21,39,520/- and thus in the teeth of Dashrathbhai (Supra), the impugned cheques do not represent the legally enforceable debt and consequently, offence under Section 138 of the Act is not attracted. Accordingly, proceedings initiated against the petitioner under Section 138 of the Act do not survive and the same are quashed.

5. Petition is disposed of in the above terms alongwith miscellaneous application.

6. Copy of the order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

JANUARY 8, 2024

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