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

+ CRL.M.C. 2777/2024, CRL.M.A. 10570/2024 &
CRL.M.A. 10571/2024

SHRI VIJAY SURYAVANSHI SOLE PROP SS

ELECTRICAL SERVICES

.....Petitioner

Through: Mr. Kamlesh Kumar
Maurya & Ms. Priya
Maurya, Advocates.

versus

LITWEL INDIA LIMITED THROUGH ITS DIRECTOR

SH MANOJ GUPTA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

19.09.2024

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1. The present petition is filed challenging the summoning order dated 09.01.2020 (hereafter '**impugned order**') in CC No. 8236/2019 passed by the learned Metropolitan Magistrate ('**MM**'), Patiala House Courts, New Delhi, pursuant to which summons were issued to the petitioner in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**'). The petitioner has challenged the impugned order on the following grounds:-

- i. *Because the Respondent company generated GRAND TOTAL bill Rs.5,28,404/- and the petitioner issued a Cheque bearing no. 563059 drawn in favour of the respondent company an amount Rs. 4,48,404/-. The entire complaint and legal notice silent about the payment of rest amount.*
- ii. *Because the Respondent 'Company and the petitioner having business relation as well as friendly relation, due to this reason the petitioner was giving some signed and blank cheque, the respondent used to spare cheque*

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issued by the petitioner for recovery of illegal demand and the respondent company never properly instructed to any counsel for send to legal notice.

- iii. Because the Respondent company filed a false and baseless Criminal Complaint under section 138 of the Negotiable Instrument, Act against the petitioner with ulterior motive to recover the amount Rs. 4,48,938/- alongwith interest @18% p.a. and cost of the present proceeding.*
- iv. Because the Respondent company not approached to the court with clean hand due to this reason the respondent not filed Evidence by way of affidavit of the respondent before Ld. trial Court at the time of pre-summoning evidence.*
- v. Because the Ld. Trial Court summoned to the petitioner without follow to proper procedure, which is available in law.*
- vi. Because the Ld. Magistrate summoned the Accused/Petitioner in aforesaid case without following to provision of law and without considering the facts of the complainant.*

2. On being asked, the learned counsel for the petitioner submits that the summons were served on the petitioner way back in the year 2022. The petitioner has not been able to explain grounds pleaded to challenge the summoning order.

3. The learned counsel for the petitioner sought to argue that the order on summoning was passed without pre-summoning evidence. Even though the said ground is raised, however, the same is not made out from the record. Even otherwise, in terms of Section 460 of the Code of Criminal Procedure, 1973, any irregularity in the order taking cognizance of an offence does not vitiate the proceedings.

4. From a perusal of the orders passed by the learned Trial Court, it is apparent that the petitioner has been trying to delay the proceedings. On 21.03.2023, final opportunity was granted to the petitioner to conduct the cross-examination of the complainant and the matter was adjourned to 27.05.2023. On 27.05.2023, none



had appeared for the petitioner.

5. The learned Trial Court noted that repeated adjournments had been taken on behalf of the petitioner and cost was also imposed on an earlier occasion. Noting the conduct of the petitioner, the right to cross-examine was closed and bailable warrants were issued. On 10.08.2023, the learned Trial Court noted that the affidavit of evidence of the complainant was not found on record and the matter was adjourned. A fresh affidavit was filed by the complainant and the copy of the same was supplied to the petitioner and the matter was, thereafter, fixed for complainant's evidence on 02.01.2024. The cross-examination of the complainant was again deferred on 02.01.2024 since the learned counsel for the petitioner was not available and the matter was adjourned to 20.04.2024.

6. It is not clear as to what transpired after the matter was adjourned to 20.04.2024. The petitioner thereafter filed the present petition which was listed on 08.04.2024. None appeared for the petitioner on that day and the matter was adjourned to 20.05.2024. On 20.05.2024, proxy counsel appeared for the petitioner and again requested for adjournment and the matter was adjourned for today.

7. Learned counsel for the petitioner has now taken a stand that the summons were issued without any pre-summoning evidence since the learned Trial Court *vide* order dated 10.08.2023 noted that the affidavit of evidence is not found on record.

8. It is undisputed that the affidavit of evidence has subsequently been filed and the petitioner has been given opportunity to cross-examine. However, the status of the complaint as of today is not clear.

9. The present petition challenges the summoning order after inordinate delay. As noted above, the trial has since proceeded

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and has, in fact, delayed due to the conduct of the petitioner. From the conduct of the petitioner, it is apparent that the only purpose of filing the present petition is to delay the proceedings. The same is an abuse of the process of the Court.

10. The petition is therefore dismissed. The petitioner is directed to pay cost of ₹5,000/- to be deposited with the Delhi High Court Legal Services Committee.

AMIT MAHAJAN, J

SEPTEMBER 19, 2024

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