



2024:DHC:579



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 24.01.2024***

+ CRL.M.C. 2325/2022 & CRL.M.A. 9831/2022

DHRUV VARMA

..... Petitioner

Through: In person.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Ms.Priyanka Dalal, APP.

Ms.Shahrukh Inam, Mr.Aamir

Mirza & Mr.Yashdeep, Advs.

for R-2.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'CrPC'), challenging the orders dated 07.11.2007 and 30.07.2008 passed by the learned Metropolitan Magistrate in CC No. 1865/1 (now CC No. 530699/2016) titled ***Canara Bank*** (which now been changed to *Phoenix ARC Private Ltd. as a subsequent assignee*) ***v. Vasu Tech Limited & Ors.***

2. The above Complaint Case has been filed by the respondent no. 2 under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').

3. By the order dated 07.11.2007, the learned Metropolitan Magistrate was pleased to issue summons on the said complaint to the respondents therein, including the petitioner herein, who



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had been impleaded as respondent no.2 in the complaint. By the subsequent Impugned Order dated 30.07.2008, notice under Section 251 CrPC was issued to the respondents therein, which included the petitioner herein.

4. The petitioner, who appears in person, submits that in the complaint, respondent no.2 had made reference to only two cheques in paragraph 8 thereof. Though in paragraphs 9 and 11 of the complaint, a reference was made to a purported cheque at serial no. 'c', details thereof were not mentioned in the complaint and specifically in paragraph 8 of the complaint. He submits that realizing the above mistake in the complaint, instead of amending the same, respondent no.2 made a statement before the learned Metropolitan Magistrate that the above mistake occurred due to an electricity failure in the office of the Advocate of the complainant. The learned Metropolitan Magistrate instead of calling upon respondent no.2 to amend the complaint, by the Impugned Order dated 07.11.2007, issued summons to the accused, including the petitioner herein, on basis of all three cheques. He submits that, therefore, there was an error in the summoning order itself inasmuch as summons were issued on default of three cheques, which included the third cheque which was not mentioned in the complaint itself. He submits that this mistake was compounded in the order dated 30.07.2008, wherein notice has been framed against the petitioner, including for the third cheque which was the cheque bearing no. 485353 dated 31.07.2007 of an amount of



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Rs.30,00,000/- drawn on UTI Bank, Bharakhamba Road.

5. Placing reliance on the judgment of the Supreme Court in ***S.R. Sukumar v. S. Sunaad Raghuram***, (2015) 9 SCC 609, he submits that the only remedy of the respondent no.2 on realizing its purported mistake in the complaint, was to seek permission to amend the complaint. This having not been done by respondent no.2, the complaint was defective and was liable to be dismissed.

6. He further submits that equity or justice cannot be a ground to condone the mistake which has been made by the respondent no.2 in its complaint inasmuch as the mandate of Sections 138 and 142 of the NI Act has to be scrupulously followed. In support, he places reliance on the judgment of the Supreme Court ***In Re: Expeditious Trial of Cases Under Section 138 of N.I. Act 1881***, (2021) 16 SCC 116.

7. He submits that such illegality can only be remedied in a petition under Section 482 of the CrPC and mere delay in filing the present petition cannot be a reason to dismiss the same.

8. On the other hand, the learned counsel for respondent no.2 submits that complete details of the third cheque had been given not only in the affidavit of evidence filed by the complainant, but also in the documents annexed with the complaint. The omission of the third cheque which should have been mentioned at serial no. 'c' of paragraph 8 of the complaint, was a mere typographical error that occurred due to electricity failure at the office of the Advocate for the complainant at the



time of drafting of the complaint. This mistake was realized before the summons was issued to the respondents in the complaint. The learned Trial Court by its Impugned Order dated 07.11.2007, accepting the explanation of the counsel, issued summons on the complaint recording that the summons should also be for the third cheque. He further submits that there is also a considerable delay in filing the present petition, which remains unexplained by the petitioner.

9. I have considered the submissions made by the petitioner, who appears in person, and by the learned counsel for respondent no.2.

10. As noted hereinabove, the present petition challenges the orders dated 07.11.2007 and 30.07.2008. The present petition has been filed on or about May 2022, that is, roughly with a delay of more than 15 years. This, itself, is a ground sufficient to dismiss the present petition.

11. Even otherwise and on merits, I find no case being made by the petitioner for interfering with the Impugned Orders. It cannot be disputed that in paragraph 8 of the complaint, details of only two cheques had been given which were claimed to be purportedly issued by the accused as part payment of the dues. However, in subsequent paragraphs, and more specifically in paragraphs 9 and 11, a reference has been made to a cheque at serial no. 'c', which clearly shows that there was a typographical error in the complaint. The affidavit of evidence filed along with the complaint referred to the third cheque as



well, so did the documents which were filed with the complaint. Realizing the said mistake, a submission was made before the learned Trial Court by the counsel for the petitioner that the details of the third cheque could not be mentioned in paragraph 8 due to an electricity failure in his office. It is important to note that at this stage, cognizance of the complaint had not been taken and summons had not been issued to the accused.

12. No doubt, at this stage, in terms of the judgment of the Supreme Court in ***S.R. Sukumar*** (Supra), the proper course for the Court should have been to ask the respondent no.2 to file an amended complaint, however, the learned Trial Court, accepting the submission made by the counsel for respondent no.2, proceeded to issue summons to the accused. The Court will have to bear in mind the maxim *actus curiae neminem gravabit*, meaning, no party should be prejudiced by the acts of the Court.

13. The complaint has thereafter proceeded on the basis that the third cheque has been duly mentioned in the complaint, for which the accused are facing trial. As noted hereinabove, more than 15 years have passed since the impugned orders. During this period, the petitioner has faced trial knowing fully well that he is facing trial for the dishonour of three cheques.

14. I, therefore, do not deem it appropriate to exercise the jurisdiction under Section 482 of the Cr.P.C. at this belated stage.

15. Accordingly, I find no merit in the present petition. The same is dismissed with costs quantified at Rs.25,000/- to be



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paid by the petitioner to the respondent no.2 within a period of four weeks from today.

NAVIN CHAWLA, J

JANUARY 24, 2024/rv/am

Click here to check corrigendum, if any

Signature Not Verified

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