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

Reserved on: 03rd September, 2024
% ***Pronounced on: 28th October, 2024***

\+ **CRL.M.C. 2937/2024 & CRL.M.A. 11250/2024**

1. **BIPIN LALSINGH PAGAR @ PAGAR BIPIN LALSINH**

S/o Lal Singh Ramchandra Pagar,
R/o Village + Post Sayyad Pimpri,
Taluka/District Nasik,
Pin Code – 422003,
Maharashtra ..... Petitioner No. 1

2. **M/S AMAX AGRO EXPORTS**

Through its Proprietor Bipin Lalsingh Pagar,
Office at: Post Sayyed Pimpri,
R/o Village + Post Sayyad Pimpri,
Taluka/District Nasik,
Pin Code – 422003,
Maharashtra ..... Petitioner No. 2

Through: Mr. Fanish Kumar & Mr. Gaurav Sahdev, Advocates.

versus

1. **STATE (GNCT OF DELHI)** .....Respondent No. 1

2. **TIGER LOGISTICS (INDIA) LIMITED**
Through its Manager– Credit Control,
Shri Harmeet Singh,
Address (Regd. Office),
D-174, Ground Floor, Okhla Industrial Area,
Phase – 1, New Delhi – 110020 .....Respondent No. 2

3. **BHAGAWAT DAULAT GAWALI**

S/o Daulat Gawali,

R/o Plot No. 3, Kakad Palace,
Dindori Road, Nashik,
Maharashtra - 422003 .....Respondent No. 3

Through: Mr. Satinder Singh Bawa, APP for State.
Mr. Shubham Tyagi, Advocate for R-2 through VC.

\+ **CRL.M.C. 2941/2024 & CRL.M.As. 11258/2024, 14457/2024**

1. **BIPIN LALSINGH PAGAR @ PAGAR BIPIN LALSINH**

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R/o Village + Post Sayyad Pimpri,
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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Petitions under Section 482 of the Code of Criminal Procedure, 1973 have been filed on behalf of the petitioners, seeking to quash the aforesaid Complaint Case bearing Nos. CC/NI Act/299/2020 and CC/NI Act/297/2020 under Section 138 of the Negotiable Instruments Act *(hereinafter referred to as* "NI Act, 1881"*)* and the Cognizance and Summoning Orders, both dated 11.01.2021 respectively along with consequential proceedings emanating therefrom.

2. Briefly stated, the petitioner No.1-Bipin Lal Singh Pagar is the sole Proprietor of his Proprietorship Firm i.e., M/s Amax Agro Exports, which is the petitioner No. 2 herein, and engaged in trading business in agricultural products mainly fruits and vegetables. The respondent No. 2-Complainant is a Company incorporated under the Companies Act, 2013 having its business relations with the petitioner, the sole Proprietor of M/s Amax Agro Exports.

3. The respondent No. 3-Bhagawat Daulat Gawali issued the Cheque

bearing Nos. 001037 and 001038 both dated 20.07.2020, both in the sum of Rs. 5,00,000/-, drawn on Axis Bank Limited in favour of the respondent No. 2-Tiger Logistics (India) Limited.

4. The respondent No. 2-Tiger Logistics (India) Limited had filed the Complaint under Section 138 of the NI Act, 1881 against the petitioner No. 1-Bipin Lal Singh Pagar, his Proprietorship Firm/ M/s Amax Agro Exports (petitioner No. 2) as well as against the Respondent No. 3-Bhagawat Daulat Gawali.

5. The case of respondent No. 2-Tiger Logistics (India) Limited was that it had long business dealings with the petitioner No. 1/Bipin Lal Singh Pagar's Proprietorship Firm. In discharge of the existing liability which had been duly acknowledged by the petitioners herein, the Cheque bearing Nos. 001037 and 001038 both dated 20.07.2020, both in the sum of Rs. 5,00,000/- drawn on Axis Bank Limited in favour of the respondent No. 2-Tiger Logistics (India) Limited.

6. The respondent No. 3-Bhagawat Daulat Gawali, who was the close friend of the petitioner No. 1 and the Guarantor for petitioner No. 2, issued and handed over the aforesaid two Cheques to the respondent No. 2/Tiger Logistics (India) Limited with the assurance that on presentation, the Cheques shall be honoured. However, the Cheques on presentation, were returned with the remarks that *"Account Closed" vide* Cheque Return Memo dated 03.09.2020.

7. The Statutory Demand Notice dated 16.09.2020 was served on the petitioners-accused in both cases to which a Reply dated 12.10.2020 was sent by the petitioner No. 1-Bipin Lal Singh Pagar, wherein he denied any relationship with the respondent No. 2-Tiger Logistics (India)

Limited/Complainant.

8. Consequently, the Complaint under Section 138 of the NI Act, 1881 was filed for and on behalf of the respondent No. 2-Tiger Logistics (India) Limited.

9. The learned Metropolitan Magistrate *vide* Order dated 11.01.2021 summoned the petitioners as well as the respondent No. 3-Bhagawat Daulat Gawali.

10. Aggrieved by the Summoning Orders dated 11.01.2021, the petitioners have preferred the present petitions.

11. The petitioners have challenged the impugned Order on the ground that the aforesaid Cheques have been signed and issued by the respondent No. 3-Bhagawat Daulat Gawali in his individual capacity which had no connection with the petitioners herein or the alleged business transaction between the petitioner No. 1-Bipin Lal Singh Pagar through its Proprietorship FirmM/s Amax Agro Exports (*the petitioner No. 2*) and the respondent No. 2-Tiger Logistics (India) Limited. Therefore, the Complaint under Section 138 NI Act, 1881 followed by Cognizance and Summoning Orders in the said Complaint against the petitioners, is not sustainable in the eyes of law.

12. The petitioners have further stated that even if the facts as narrated by respondent No. 2-Tiger Logistics (India) Limited are considered, then too, no case is made out under Section 138 of NI Act, 1881 since he is not a signatory to the Cheques and continuance of these proceedings would result in gross miscarriage of justice and abuse of process of law.

13. Furthermore, the learned Trial Court has completely failed to appreciate that Section 141 of the NI Act, 1881 providing for vicarious

liability is attracted only in case of Body Corporate, Partnership Firm, or other Association of individuals, but not in case of proprietorship concern. The respondent No. 3-Bhagawat Daulat Gawali is not an employee or authorized signatory of the petitioners.

14. The main ground of challenge of the Summoning Orders is that the aforesaid two Cheque (which are the subject matter of the two Complaints) are signed by the respondent No. 3-Bhagawat Daulat Gawali, neither the petitioner No. 1-Bipin Lal Singh Pagar nor his Proprietorship Firm i.e., the petitioner No. 2, is in any way connected to these alleged Cheques. Hence, Section 138 and/or Section 141 of the NI Act, 1881 are not attracted against the petitioners.

15. It is, therefore, asserted that the Summoning Orders dated 11.01.2021, in both the Complaints, suffer from illegality and the summoning Order are liable to be set aside.

16. **Learned counsel on behalf of the respondent No. 2** had contested the present petition on the ground that the Cheque though signed by Bhagawat Daulat Gawali, but he had signed for and on behalf of the Proprietorship Firm, which is the petitioner No. 2 herein, of which the petitioner No. 1-Bipin Lal Singh Pagar is the sole Proprietor. Therefore, there is no infirmity in the impugned Complaint Case bearing Nos. CC/NI Act/299/2020 and CC/NI Act/297/2020 and the present petitions are liable to be dismissed.

17. **Submissions heard.**

18. In these cases, the Cheques No. 001037 and 001038 dated 20.07.2020 were issued by Respondent No. 3 in favor of Respondent No. 2, who presented the same to its banker which was returned as dishonored with

remarks as "Account Closed". This led to issuance of statutory demand notice dated 16.09.2020 to both the Petitioner No. 1 and Respondent No. 3. Thereafter, Complaint cases bearing No. CC/NI Act/297/2020 and CC/NI Act/299/2020 came to filed against Petitioner No. 1 and Respondent No. 3.

19. The Petitioners have challenged the cognizance and summoning order dated 11.01.2021 for not appreciating the record available and being contrary to applicable laws.

20. The law pertaining to the facts of this case would require a look at Section 138 of the NI Act, 1881 which reads as under: -

> *"**Section 138: Dishonour of cheque for insufficiency, etc., of funds in the account.***
>
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 2[a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that…."*

21. The Supreme Court in *Nishant Aggarwal v. Kailash Kumar Sharma*, AIR 2013 SC 2634, interpreted Section 138 of the NI Act and laid down that Section 138 has five components, namely:

> *1. drawing of the cheque;*
> *2. presentation of the cheque to the bank;*

3. returning the cheque unpaid by the drawee bank;
4. giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and
5. failure of the drawer to make payment within 15 days of the receipt of the notice.

22. The Cheque is essentially a contract whereby the Drawer of the Cheque undertakes that on presentation of the Cheque, the specified amount shall be released in favour of the Drawee.

23. Section 138 of NI Act, 1881 is specific and it involves a Drawer who is the signatory of the Cheque and the Drawee. And it is only the drawer of the cheque dishonoured who can be prosecuted under section 138 of the Act and no one else.

24. It this context, reference be made to the case of *I.C.D.S. Ltd. v. Beena Shabbir & Anr.*, AIR 2002 SC 3014 wherein the Supreme Court has observed that –

> *"...the language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words "Where any cheque". The above noted three words are of extreme significance, in particular, by reason of the user of the word "any" the first three words suggest that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well."*

25. In the present case, admittedly, the transactions were between the

respondent No. 2-Complainant and the petitioner, the sole Proprietor of M/s Amax Agro Exports. The Proprietorship Firm has no separate entity and in fact, it is only the sole Proprietor who can be summoned. This aspect has also been mentioned by the learned Metropolitan Magistrate in the Summoning Order dated 11.01.2021 vide which the petitioner, as the sole Proprietor, has been summoned, while his Proprietorship Firm has been held to have no independent entity.

26. But the core question which arises is whether the Petitioner can be summoned under S.148 NI Act for a dishonoured Cheque that has not been signed by him but by one Bhagawat Daulat Gawali, who is neither an employee nor a Legal Representative of the petitioner or his Proprietorship Firm. The said two Cheques pertain to the account of the respondent No. 3-Bhagawat Daulat Gawali and not to the account of the petitioners. There is not a whisper of any averment that he was competent to sign the cheque for and on behalf of the petitioners.

27. Pertinently, the Cheques in question have been dishonoured on the ground of *"Account Closed" vide* Cheque Return Memo dated 03.09.2020.

28. Since, the petitioner No. 1-Bipin Lal Singh Pagar is not a signatory to the said two Cheques, he canot not be held liable under Section 138 of NI Act, 1881. The claim of the respondent No. 2-Tiger Logistics (India) Limited that the Cheques had been issued by the respondent No. 3/Bhagawat Daulat Gawali for and on behalf of the petitioners in discharge of their liabilities towards the respondent No. 2-Tiger Logistics (India) Limited, may be a basis for filing the Civil Suit, but these averments for Complaint under Section 138 of NI Act, 1881 are not maintainable against the petitioners.

29. Therefore, the petitioners not being a signatory to the two Cheques

cannot be summoned in the Complaint Case under Section 138 of the NI Act, 1881.

<u>Conclusion</u>: -

30. In the light of the aforesaid discussion, the Summoning Orders both dated 11.01.2021 in the two Complaints, against the petitioners are patently illegal and are hereby set aside, though they may be continued against Bhagawat Daulat Gawali, in accordance with law.

31. Accordingly, the present petitions, along with pending application(s), if any, are hereby disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 28, 2024
S.Sharma