



2024:DHC:8533



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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

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CRL.M.C. 2986/2024 & CRL.M.As. 11470/2024, 13676/2024

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

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

Through: Mr. Satinder Singh Bawa, APP for
State.

Mr. Shubham Tyagi, Advocate for
R-2 through VC.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking to quash



the Complaint Case bearing No. CC/NI Act/278/2020 under S.138 Negotiable Instruments Act, 1881 with all consequential proceedings arising therefrom.

2. ***Briefly stated***, respondent No. 2 Tiger Logistics (India) Limited/ Complainant, was having its business relations with the petitioner, petitioner-Bipin Lal Singh Pagar (*accused in the Complaint*), the sole Proprietor of his Proprietorship Firm i.e., M/s Amax Agro Exports, which is engaged in trading business in agricultural products, mainly fruits and vegetables.

The petitioner's Firm is alleged to have handed over Cheque bearing No. 069190 dated 21.07.2020 drawn on Axis Bank Limited in favour of the respondent No. 2-Complainant for a sum of Rs. 5,00,000/- in discharge of his liabilities towards the respondent No. 2/Complainant.

3. The *petitioner-accused* herein has asserted that the signatory of the Cheque is one Bhagawat Daulat Gawali, but it bears the rubber stamp of the Proprietorship Firm of the petitioner-accused which has been dishonestly and mischievously put under the signatures of Bhagawat Daulat Gawali, which on presentation was dishonoured *vide* Cheque Return Memo dated 14.09.2020, with the remarks "*Drawer's Signature Differs*".

4. In response to the Statutory Demand Notice dated 16.09.2020 under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "NI Act, 1881"*) issued by respondent No. 2-Complainant, petitioner-accused gave an appropriate Reply stating therein that the sole Proprietorship Firm has no independent, separate and legal entity. Furthermore, it was denied that the petitioner-accused had any concern with the Cheque issued by Bhagawat Daulat Gawali in favour of the respondent No. 2-Complainant.

5. The respondent No. 2-Complainant filed a Complaint under S.138 NI



Act against the petitioner, in which the petitioner-accused was summoned *vide* Order dated 01.02.2021. The summoning Order has been challenged on the ground that the petitioner is not the signatory of the said Cheque and he has no concern with the transaction in regard to which Bhagawat Daulat Gawali has issued the Cheque in favour of the respondent No. 2-Complainant.

6. It is further submitted that the Proprietorship Firm has no independent identity and it is only the sole proprietor who can be held responsible or incur liability, and it cannot be made vicariously liable under Section 141 of NI Act, 1881 for a Cheque which does not bear his signatures. Moreover, Bhagawat Daulat Gawali is neither an employee nor the Authorised Representative of the petitioner-accused or his Proprietorship Firm.

7. It is, therefore, asserted that the Summoning Order dated 01.02.2021 suffers from patent illegality and is liable to be recalled.

8. **The respondent No. 2** had contested the present petition on the ground that the Cheque though signed by Bhagawat Daulat Gawali, but is for and on behalf of the Proprietorship Firm, of which the petitioner-accused is the sole Proprietor. Therefore, there is no infirmity in the impugned summoning Order and the present petition is liable to be dismissed.

9. **Submissions heard.**

10. Section 138 of the NI Act, 1881 is relevant 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”

11. The Cheque is essentially a contract whereby the Drawer of the Cheque undertakes that on presentation, the amount specified in the Cheque shall be released in favour of the Drawee. Section 138 of NI Act, 1881 is specific and it involves a Drawer who is the signatory of the Cheque and the Drawee.

12. In the present case, admittedly, the transactions were between the respondent No. 2-Complainant and the petitioner/accused, the sole Proprietor of M/s Amax Agro Exports. Under the law, 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 01.02.2021, wherein only the petitioner, as the sole Proprietor, has been summoned, while his Proprietorship Firm has been held to be having no independent entity.

13. But the core issue which arises is that the Cheque has not been signed by the petitioner but by one Bhagawat Daulat Gawali, who is neither an employee nor a Legal Representative of the petitioner or his Proprietorship Firm. The Cheque may be having the stamp of the Proprietorship Firm, but there is not a whisper of any averment that he was competent to sign the



cheque for and on behalf of the petitioner-accused.

14. Pertinently, the Cheque in question has been dishonoured on the ground of signature being different, which again implies that Bhagawat Daulat Gawali had no authority to sign the Cheque for and on behalf of the petitioner-accused or his Proprietorship Firm. The Cheque does not bear the signatures of the petitioner-accused and therefore, cannot be held liable either for the issuance of Cheque or its consequent dishonour.

15. The assertion of the respondent No. 2-Complainant that Bhagawat Daulat Gawali had issued the Cheque for and on behalf of the petitioner-accused in discharge of his liability is not tenable under Section 138 of NI Act, 1881. This may be a valid ground for filing a Suit for Recovery but definitely under Section 138 of NI Act, 1881 which is specific and is applicable only to the Drawer and Drawee of the Cheque, no third party can be summoned under Section 138 of NI Act, 1881.

16. Therefore, the petitioner-accused not being a signatory to the Cheque, cannot be summoned in the Complaint Case under Section 138 of the NI Act, 1881 filed for and on behalf of the respondent No. 2-Complainant.

Conclusion: -

17. In the light of the aforesaid discussion, the Summoning Order dated 01.02.2021 is patently illegal and is hereby set aside.

18. The Complaint Case bearing No. CC/NI Act/278/2020 under Section 138 of NI Act, 1881 vis-a-viz. the petitioner is hereby quashed.

19. Accordingly, the present Petition along with pending applications is hereby disposed of in the above terms.

(NEENA BANSAL KRISHNA)



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JUDGE

OCTOBER 28, 2024

S.Sharma