



2024:DHC:6027



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

Date of decision: 05th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 2540/2022, CRL.M.A. 10614/2022**

ANITA

.....Petitioner

Through: Mr. Sandeep Khurana, Mr. Shiven Khurana, Mr. Anshul Tyagi and Mr. Manjit Singh, Advocates.

versus

DR. SANDEEP SHARMA

.....Respondent

Through: Mr. Manish Makhija, Advocates.
Mr. Abhijat, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 482 Cr.P.C has been filed by the Petitioner challenging the Summoning Order dated 22.09.2021 passed by the Ld. Metropolitan Magistrate, (NI Act), Digital Court-06, South District, Saket Court, New Delhi in Criminal Complaint No.3726/2021 and for quashing the said Criminal Complaint No.3726/2021.

2. The facts of the case, in brief, are as under:

- i. On 15.04.2015, an alleged agreement to sell was executed between the Petitioner and the Respondent which was to be concluded on 10.08.2015 for a sum of Rs.51,00,000/- in respect of property bearing No.72 in Gali No. 2, Humayunpur Village, Krishna Nagar, New Delhi (*hereinafter referred to as "Subject Property"*).
- ii. It is stated that an amount of Rs.15,00,000/- was received in



2024:DHC:6027



Petitioner's bank account in two tranches i.e. on 01.07.2015 and 10.08.2015 which was deposited by the Respondent.

- iii. On 26.04.2016, the subject property was sold by the Petitioner to a third party as per her deceased husband's wish by executing a registered Sale Deed.
 - iv. It is stated that after almost five years, on 11.08.2021, the Respondent filed a Criminal Complaint against the Petitioner under Section 138 read with Section 142 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as "NI Act"*) alleging dishonour of three cheques bearing Cheque No.013209 dated 11th April 2021, Cheque No.013210 dated 11th May 2021 and Cheque No.013211 dated 11th June 2021 for an amount of Rs.50 lakhs, 14 lakhs and 14 lakhs respectively, all drawn on Dena Bank, Safdarjung Enclave Branch, New Delhi, and vide the Order impugned herein, the Magistrate has issued summons to the Petitioner.
3. Learned Counsel appearing for the Petitioner states that the Impugned Summoning Order and the criminal complaint against the Petitioner is based on cheques allegedly given for a time barred debt. It is also stated that no complaint under Section 138 of the NI Act is maintainable based on a debt which is evident from the explanation appended to Section 138 of the NI Act.
4. Learned Counsel for the Petitioner contends that the cheques which were issued were of Dena Bank which merged with the Bank of Baroda in 2019. He states that the cheques in question are dated 11.04.2021, 11.05.2021 & 11.06.2021 and in view of the fact that Dena Bank merged with Bank of Baroda in 2019 it is clearly established that the cheques were



2024:DHC:6027



given only as a security to the Respondent. He states that no sane person would have accepted cheques of Dena Bank in 2021 when it had already merged with the Bank of Baroda in 2019.

5. *Per contra*, learned Counsel for the Respondent states that all the cheques of Dena Bank were initially valid till March, 2021 but the validity of the cheques was extended till 30.06.2021 and, therefore, the cheques issued by the Petitioner were valid. Learned Counsel for the Petitioner places reliance on Section 139 of the NI Act which raises a presumption in favour of the holder of the cheque and states that unless the contrary is proved, it will be presumed that the holder of the cheque received it in discharge of a debt. He further states that the issue as to whether the cheque was given for an existing liability or not could have been decided only in Trial and cannot be adjudicated at the stage of issuance of summons.

6. Heard learned Counsel appearing for the Parties and perused the material on record.

7. Sections 138 and 139 of the NI Act reads as under:

"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 [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 nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

The explanation appended to Section 138 of the NI Act indicates that a cheque can be issued only for a legally enforceable debt or other liability.



8. The issue as to whether the debt based upon which the complaint under Section 138 of the NI Act was filed is time barred or not is a question of fact which can be decided only in trial. The Apex Court in Yogesh Jain vs. Sumesh Chadha, **2022 SCC OnLine SC 2195** has held that the issue as to whether the debt is time barred or is legally enforceable or not ought not to be considered at the initial stage. The Apex Court in the said Judgment has observed as under:

"5. The High Court seems to have proceeded on the footing that there is no averment in the entire complaint as regards any kind of acknowledgment of the said debt by the accused within the period of three years i.e. within the limitation period of recovering the debt.

6. It appears prima facie from the materials on record that the loan was advanced sometime in the year 2011. The cheque in question duly issued by the accused for the discharge of the debt is dated 01.11.2018 and complaint for the offence under Section 138 of the N.I. Act was lodged on 14.01.2019. It appears that the High Court has gone by the date of the loan transaction to be precise the year of the loan transaction. If a cheque is issued on 01.11.2018 for the discharge of the debt incurred in the year 2011 then prima facie it could be said to be an acknowledgement of the debt. This aspect needs to be re-considered by the High Court in its true perspective. The High Court in its impugned order¹ has observed as under:—

“There is no averment in the entire complaint as regards any kind of acknowledgement of the said debt by the petitioner within the period of three years i.e. the limitation period to recover the debt. Thus, there being no acknowledgement by or



on behalf of the accused, it cannot be said that the complaint filed in respect of the said debt was maintainable.”

7. Thus, what is sought to be conveyed by the High Court is that the acknowledgement of the debt at the instance of the accused should have been within three years from the date of transaction and there is no averment in the complaint in this regard. We fail to understand such a line of reasoning by the High Court. We say so because the loan which was advanced of Rs. Five Lakh by the complainant to the accused was for a period of seven years. Prima facie, it appears that the liability towards repayment of the loan was to be discharged within a period of seven years. If that be so, then on what basis the initial first three years have been taken into consideration by the High Court for the purpose of counting the limitation. Perhaps what is in the mind of the High Court is that by the time, the cheque in question was issued the debt had become barred by limitation because no acknowledgement was obtained before the expiry of three years from the date of loan. However, as noted above, the understanding was to discharge the liability within a period of seven years. Prima facie, we are of the view that the period of limitation would start reckoning from the expiry of the period of seven years.

8. Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under Sections 118 and 139 resply of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself prima facie, is a matter of evidence and could not have been adjudicated in an application filed by the accused under Section 482 of the CrPC.”



2024:DHC:6027



9. At this juncture, this Court is not inclined to go into the question as to whether the cheque was issued for an existing liability or not in light of the law laid down by the Apex Court in Yogesh Jain (supra). No doubt, the cheques are of Dena Bank and are dated 11.04.2021, 11.05.2021 & 11.06.2021. On the dates when the cheques were issued they were legal tenders as the validity of the cheques was till 30.06.2021.

10. At this juncture, while exercising its jurisdiction under Section 482 Cr.P.C, this Court cannot go into the question as to whether the debt had become time barred or as to whether the cheques were issued for a legally enforceable debt as these questions have to be adjudicated at the time of trial and not at the stage of issuance of summons.

11. Therefore, at this juncture, this Court is not inclined to interfere with the Impugned Summoning Order passed by the Ld. Metropolitan Magistrate and quash the criminal complaint. The Ld. Trial Court is requested to proceed with the complaint in accordance with law.

12. The petition is disposed of, along with pending application(s), if any. It is made clear that this Court has not expressed any opinion on the merits of the case.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2024

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