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

Date of decision: 26.04.2024

+ **CRL.M.C. 3240/2024**

MR DIGVIJAY SINGH & ANR.

..... Petitioners

Through: Ms.Ashima Mandla,
Ms.Mandakini Singh, Mr.Surya
Pratap Singh, Advs. (through
VC)

versus

M/S VAKA & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 12501/2024 & CRL.M.A. 12502/2024

1. Allowed, subject to all just exceptions.

CRL.M.C. 3240/2024 & CRL.M.A. 12500/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for quashing of the complaint filed by the respondents under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), being CC NI Act 16003/2022 titled as *M/s Vaka v. Digvijay Singh Jhala; Prop. M/s Indirashree Sourcing*.

3. The above complaint has been filed by the respondents alleging therein that the petitioner no.1 is the proprietor of M/s Indirashree



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Sourcing, while the petitioner no.2 is the authorized signatory of the said concern and has also signed the cheque in question. It is further alleged in the complaint that, on the dishonour of the cheque, the respondents had issued a Demand Notice dated 13.10.2022 through his counsel to the petitioner, which was posted on 15.10.2022 by way of speed post. The same was duly served upon the petitioner but he managed to return the same with the remark '*DIYE GAYE PATE PAR POOUCTACH KARNE PAR BATAYA KI ISS NAAM KA KOI VYAKTI NAHI HAI*'.

4. The relevant averments in the complaint are as under:

"7. That the complainants sent a legal demand notice to the accused through his counsel dated 13.10.2022 posted on 15.10.2022 through Speed Post at the above mentioned the address of the accused vide Postal receipt No. ED042913905IN, the same was duly served upon the accused but he manage to returned the same and the envelope was received back with report dated 19.10.2022 "DIYE GAYE PATE PAR POOUCTACH KARNE PAR BATAYA KI ISS NAAM KA KOI VYAKTI NAHI HAI"

8. That the cheque in question was signed by accused No.2 the authorised signatory of the accused No.1 from the account of M/s INDIRASHREE SOURCING and the accused No.1 is owner of the same."

5. The learned counsel for the petitioners submits that M/s Indirashree Sourcing is a partnership firm. In support, she places reliance on the GST registration certificate of M/s Indirashree Sourcing, which has been annexed with the present petition as Annexure - P/12. She submits that the complaint in absence of the



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partnership firm, that is, M/s Indirashree Sourcing, not being made a party to the complaint, is not maintainable. In support, she places reliance on the judgment of the Supreme Court in *Aneeta Hada v. Godfather Travels & Tours (P.) Ltd.*, (2012) 5 SCC 661, and of a learned Single Judge of this Court in *Squirrel Design House & Ors. v. Vivek Kumar Tripathi*, 2024 SCC OnLine Del 970.

6. She further submits that the notice issued by the respondents prior to the filing of the complaint, has admittedly not being delivered on the petitioners. She submits that, therefore, the complaint was not maintainable. In support, she places reliance on the judgment dated 03.08.2023 of the Supreme Court in Criminal Appeal No.879/2023 titled as *Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr.* 2023 INSC 692.

7. She further submits that the partnership- M/s Indirashree Sourcing being registered at Noida, it was mandatory for the learned Metropolitan Magistrate to follow the procedure under Section 202 of the Cr.P.C.. In support, she places reliance on the judgment of the Supreme Court in *K.S. Joseph v. Philips Carbon Black Ltd.*, (2016) 11 SCC 105.

Analysis & Conclusion

8. I have considered the submissions made by the learned counsel for the petitioners, however, find no merit in the same.

9. In the complaint, the respondents have averred that M/s Indirashree Sourcing is a sole proprietorship concern of the petitioner no.1. At present, this averment has to be taken as correct until



disproved by the petitioners. Mere production of GST registration may not be sufficient for the same inasmuch as, it would have to be deciphered from the dealings between the parties if there was any representation by the petitioners to the respondents which would give a legitimate reason for the respondents to conclude that M/s Indirashree Sourcing is a proprietorship concern of the petitioner no.1. For the said reasons, the judgments in *Aneeta Hada* (Supra) and in *Squirrel Design House* (Supra) would have no application to the facts of the present case, as in those judgments, it was an admitted case of the Complainant that the cheque in question had been issued on behalf of a company and a partnership, respectively.

10. On the issue of service of notice under proviso (b) to Section 138 read with Section 142 of the NI Act, in the complaint, there is a specific averment that the notice has been served on the petitioners and they have deliberately sent back the envelope with the remark that the petitioners were not found at the given address. This would again be a matter of evidence and, for the same, the complaint cannot be scuttled at the initial stage. The judgment of the Supreme Court in *Ashok Shewakramani* (supra) would also not be applicable in the facts of the present case.

11. It has been repeatedly cautioned by the Supreme Court that the High Court in exercise of power under Section 482 of the Cr.P.C., should not scuttle the complaint at the initial stage. I may make a reference to the judgment of the Supreme Court in *Rathish Babu Unnikrishnan v. State (NCT of Delhi)*, 2022 SCC OnLine SC 513, wherein the Supreme Court has held as under:



“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”



12. As far as the plea of non-compliance of 202 Cr.P.C. is concerned, I again find no merit.

13. Section 202 of the Cr.P.C. reads as under:-

“202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”



14. The Supreme Court in *Expedition Trial of Cases under Section 138 of NI Act, 1881, In Re*, (2021) 16 SCC 116, considered the application of Section 202 of the Cr.P.C. vis-à-vis Section 138 of the NI Act and held that the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. However, reading Section 145 of the NI Act along with Section 202 of the Cr.P.C., it held that Section 202(2) of the Cr.P.C. is applicable to complaints under Section 138 of the NI Act in respect of examination of witnesses on oath; the evidence of witnesses on behalf of the complainant shall be permitted on affidavit and if the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202 of the Cr.P.C.

15. In *Sunil Todi v. State of Gujarat*, 2021 SCC OnLine SC 1174, the Supreme Court reiterated the above position of law, as under:-

“46. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in the CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2)



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CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202."

16. The Supreme Court further held that in determining the question whether process is to be issued, the Magistrate has to be satisfied whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can only be determined at the trial.

17. This court in ***Northern India Paint Colour & Varnish Co. LLP v. Sushil Chaudhary***, 2023 SCC OnLine Del 7193, also took note of the Practice Directions issued by this Court on 21.06.2021 insofar as they pertain to conduct of an inquiry under Section 202 of the Cr.P.C. and held that under Section 138 of the NI Act, the mandatory inquiry as contemplated by Section 202 of the Cr.P.C. can be conducted by taking evidence of the complainant on affidavit and the inquiry need not be necessarily conducted by taking evidence on oath, and documents may be examined by the Trial Court for satisfaction as to the sufficiency of grounds for proceedings under Section 202 of the Cr.P.C.

18. Reference in this regard is also made to the judgment of another Single Judge of this Court in ***Ashok Kumar Gupta v. Anil Gupta***, 2023 SCC OnLine Del 4119.



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19. In the present case, what is also relevant is that the proceedings before the learned Trial Court are still at the stage of consideration of an application filed by the respondent no. 2 seeking condonation of delay. Therefore, the challenge of the petitioners is clearly premature and even otherwise not sustainable.

20. In view of the above, I find no merit in the present petition. The same is dismissed. The pending application also stands disposed of being rendered infructuous.

NAVIN CHAWLA, J

APRIL 26, 2024/ns/ss

Click here to check corrigendum, if any