



2024:DHC:8403



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

% **Date of order: 18th October, 2024**

+ **CRL.M.C. 4118/2023 & CRL.M.A. 15474/2023**

TARUN MATHUR & ANR.Petitioners

Through: Mr.S.B. Sharma, Mr.Ramesh Kumar,
Mr.Yashwant Gahlot, Mr.Ankit
Sharma and Mr.Tarun Kumar,
Advocates

versus

ANIL JAINRespondent

Through: None

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioners seeking the following reliefs:-

"A) Set-aside the impugned order dated 14.03.2023 passed by the Id. ASJ, Dwarka Court, New Delhi in Criminal Revision Petition no. 627 /2022 titled as Tarun Mathur Vs. Anil Jain thereby the summoning order dated 08.04.2021 and framing of notice dated 18.04.2022 against petitioner no. 1 and 09.06.2022 against the petitioner no. 2 passed by the court of,

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Ld. MM(NI Act-04), Dwarka Court, New Delhi in the case titled Anil Jain Vs. Tarun Mathur & Anr. in CC Case No. 44492/2019 be quashed

B) Any other or further order which this Hon'ble Court may deems fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.”

2. The brief facts that led to the filing of the instant petition are that the respondent herein had filed a complaint bearing CC No. 44492/2019 against the petitioners before the learned Metropolitan Magistrate, Dwarka Courts, Delhi (hereinafter “MM”) under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “NI Act”). In the said complaint case, the learned MM issued summons against all the petitioners vide order date 8th April, 2021 and framed notice against the petitioner no. 1 vide order dated 18th April, 2022 and against the petitioner no. 2 vide order dated 9th June, 2022.
3. The petitioner challenged the aforesaid summoning order and framing of notice before the learned ASJ under Section 397 of the CrPC, thereby, invoking the revisional jurisdiction vide case bearing CR No. 627/22. The said revision petition was dismissed by the learned ASJ vide order dated 14th March, 2023.
4. Being aggrieved by the same, the petitioners have approached this Court seeking setting aside of the same.
5. Learned counsel appearing on behalf of the petitioners submitted that the impugned order dated 14th March, 2023 is liable to be set aside being bad



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in law as the same has been passed without considering the entirety of the matter.

6. It is submitted that the learned ASJ failed to appreciate that while issuing the summoning order, the learned Trial Court has not considered that the statutory notice under Section 138 of the NI Act has not been served on the petitioner.

7. It is submitted that the learned ASJ dismissed the petitioner's revision petition filed against the summoning order, without considering other aspects as mentioned in the revision petition and rejected the revision on the ground of Section 223 of the CrPC.

8. It is further submitted that the learned ASJ failed to appreciate that the learned Trial Court issued summons without going through the records of the case as per which the cheques in question were of different banks and issued by different persons/signatories as well as the same pertain to different transactions.

9. It is submitted that as per the settled position of law, the persons, other than the signatory of the cheques, cannot be prosecuted. Therefore, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed.

10. There is no appearance on behalf of the respondent.

11. Heard learned counsel appearing on behalf of the petitioners and perused the material available on record.

12. The instant petition has been filed under Article 227 of the Constitution of India read with Section 482 of the CrPC (now Section 528 of



the Bharatiya Nagarik Suraksha Sanhita, 2023). It has been already settled in a catena of judgments that although the High Court has inherent powers under Section 482 of the CrPC (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) while adjudicating a petition, however, the said power has to be exercised sparingly and with caution wherein the High Court must bear in mind that it does not interfere unnecessarily, unless there is some material irregularity or illegality.

13. Before advertng to the merits of the matter in hand, this Court finds it appropriate to shed some light on the issue of law involved where the petitioners have challenged the impugned order and contended that the learned ASJ failed to appreciate that the summons were issued against them erroneously.

14. Section 138 of the NI Act is a quasi criminal remedy available to a party aggrieved by the dishonor of a cheque, who may initiate such proceedings against the issuer of a cheque.

15. This Court is of the view that summons issued in a complaint case under Section 138 of the NI Act may be quashed if it is *prima facie* apparent from the complaint that the complainant has not presented even an iota of evidence for filing the said complaint which shows occurrence of an offence.

16. In the case of ***HMT Watches Limited v. M.A. Abida***, (2015) 11 SCC 776, the Hon'ble Supreme Court held as under:

“10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as



security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplained with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

(emphasis supplied)..”

17. In **A.S. Pharma (P) Ltd. v. Nayati Medical (P) Ltd., 2024 SCC OnLine SC 2539**, the Hon’ble Supreme Court observed as under:

*“6. In the decision in Monica Kumar (Dr.) v. State of Uttar Pradesh [MANU/SC/7760/2008 : 2008:INSC:740 : (2008) 8 SCC 781], this Court held that **the inherent jurisdiction Under Section 482, Code of Criminal Procedure, would be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself viz., to give effect to any order under Code of Criminal Procedure, or to prevent abuse of process of any Court or otherwise to secure the ends of justice.***

...

*11. It is thus well-neigh settled position that the **inherent powers Under Section 482, Code of Criminal Procedure, are invocable when no other efficacious remedy is available to the***



party concerned and not where a specific remedy is provided by the statute concerned. We may further add here that certainly the power Under Section 482, Code of Criminal Procedure, is not invocable, ignoring the factor which is sine qua non for the exercise of power to compound the offence(s) under N.I. Act viz., the consent of the complainant.”

18. Upon perusal of the aforesaid judgments, it is made out that it has been emphasized time and again by the Hon’be Supreme Court that the High Court while exercising powers under Section 482 CrPC must bear in mind that whenever a proceeding under the NI Act has been challenged under the said provision, it should not express its view on the disputed question of facts to arrive at a conclusion that the offence is not made out as the same would amount to error of law.

19. Inherent powers of High Court cannot be taken for granted by the party against whom summons under Section 138 of the NI Act have been issued and the litigants must abhor filing of petitions in a routine manner.

20. The petitioner in the instant case has asserted that the learned ASJ failed to appreciate that the learned Trial Court issued summons without going through the records of the case as per which the cheques in question were of different banks and issued by different persons/signatories as well as the same pertain to different transactions.

21. Upon perusal of the records of the present case, it is made out that after considering the contents made in the petition as well as the documents alongwith the complaint, and the evidences which have been filed alongwith



the affidavit, the learned Magistrate has passed a detailed and reasoned order while issuing the summons.

22. A revision petition was filed challenging the order dated 8th April, 2021 in case CC No. 4449/2019, passed by the learned Trial Court. In this order, the learned Trial Court summoned the petitioners herein for an offence under Section 138 of the NI Act and served a notice under Section 251 CrPC.

23. The petitioners argued that the learned Trial Court failed to consider that one of the cheques belonged to a joint account, signed only by the petitioner no. 2. Thus, the petitioner no. 1 should not have been summoned for the cheque signed by the petitioner no. 2, and *vice versa*. They further contended that a consolidated complaint involving two different cheques issued by two different persons from two separate banks should not be tried together as it is not maintainable.

24. The learned ASJ reviewed the records and found that the respondent filed the case under Section 138 of the NI Act, alleging that the petitioners herein received a loan from the respondent due to their friendly relations, for which they issued the cheques in question. These cheques were dishonored, and a demand notice was subsequently sent, to which the petitioners did not respond by paying the cheque amount.

25. The learned ASJ observed that both the cheques were given as part of the same transaction, and under Section 223 CrPC, individuals accused of offenses arising from the same transaction could be tried together. Additionally, since separate notices under Section 251 CrPC had been



framed against each petitioner, the learned ASJ found no prejudice to their rights by trying them jointly.

26. Thus, the learned ASJ found no legal infirmity, material illegality, or jurisdictional error in the learned Trial Court's order to summon the petitioners and frame the notice against them and the revision petition was dismissed.

27. As per the settled principle of law, summons can be issued only, when, *prima facie*, a case is made out on the basis of documents alongwith the complaint, its contents and the evidences filed alongwith the affidavit.

28. The two previous Courts have taken the same view and the learned Trial Court, has also, passed a reasoned order after considering the arguments advanced by learned counsel for the petitioners at the stage of summoning.

29. This Court is of the view that the Court concerned has taken into consideration the submissions made as well as the contents of the petition, and thereafter, rejected the revision petition by way of passing a detailed and reasoned order, by upholding the summoning order passed by the learned Trial Court.

30. The learned ASJ in this case has correctly upheld the order of the learned Trial Court to summon the petitioners under Section 138 of the NI Act, based on the settled principles of law. According to these principles, summons can be issued when, *prima facie*, a case is made out through the complaint, supporting documents, and evidence filed with the affidavit. Here, the learned Trial Court carefully reviewed these materials, issuing a



reasoned summoning order and framed notice only after considering the details provided. This approach aligns with established legal practice, underscoring that a Court should ensure there is enough preliminary evidence to proceed without delving deeply into disputed factual questions at the summoning stage.

31. Moreover, it is well established by the Hon'ble Supreme Court that the Courts should avoid expressing views on disputed factual questions to conclude whether an offence has been made out when proceedings under the NI Act are challenged in a higher Court, such as the High Court, under Section 482 CrPC.

32. Engaging with these questions at this stage would be evidently a premature adjudication of factual issues meant for trial. Therefore, the learned ASJ's reasoning that both cheques were issued as part of the same transaction further validates the summoning order.

33. It is noted that under Section 223 of the CrPC, individuals accused of offences within the same transaction may be tried together, which in this case avoids the inefficiency of separate trials for related matters. The learned ASJ noted that separate notices under Section 251 CrPC were framed for each petitioner, safeguarding their rights while enabling a joint trial without causing prejudice. Thus, the learned ASJ's order appropriately balances procedural fairness with judicial efficiency, justifying the dismissal of the revision petition and this Court does not find any kind of irregularity thereto.

34. With respect to the same, this Court is of the opinion that whether the cheques pertain to different transactions and whether the criminal complaint



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can be adjudicated in view of the aforesaid objection raised by the petitioners is a disputed question of fact which requires trial and thus, the present petition does not hold any merit.

35. This Court does not find any material on record which can be stated to be of sterling quality warranting invocation of the jurisdiction of this Court under Section 482 CrPC at this stage when the learned Trial Court has issued summons and framed notice of charge against the petitioners.

36. Before parting, this Court deems it imperative to state that in contemporary practice, a complainant in proceedings under Section 138 of the NI Act often endures greater procedural hardship than the accused. This stems primarily from the trend wherein every summoning order issued by the Magistrate is challenged on various grounds. Such challenges compel the complainant to defend the validity of the Magistrate's orders at the preliminary stages of the case.

37. This tactic not only delays the proceedings but also places the complainant at a significant disadvantage, undermining the objective of Section 138 of the NI Act as a mechanism for swift redressal of dishonored cheques. Consequently, the complainant, rather than swiftly obtaining relief, is embroiled in protracted legal battles that detract from the intended efficiency of the summary trial process envisioned under the said Act and its high time that the same must be avoided as it not only violates the intent of the legislature but also increases unnecessary burden upon the litigants as well as the High Courts.



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38. In view of the above facts and circumstances, it is held that there is no illegality in the order dated 14th March, 2023 passed by the learned ASJ in CR No. 627/22 and the same is hereby upheld.

39. Accordingly, the instant petition, along with the pending applications, if any, stands dismissed.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 18, 2024

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Click here to check corrigendum, if any

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