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

Date of decision: 29.04.2024

+ CRL.M.C. 2806/2022 & CRL.M.A. 11585/2022

RUPESH KUMAR PANDEY AND ANR.

..... Petitioners

Through: Mr.Sreekar Aechuri, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) AND ANR.

..... Respondent

Through: Mr.Aman Usman, APP.

ASI Dinesh.

Mr.P.D. Gupta, Sr. Adv. with

Mr.Atul Gupta, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. 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 FIR No. 330/2022 registered at Police Station: Paschim Vihar West, New Delhi for offence under Sections 420/380/120-B of the Indian Penal Code, 1860 (in short, 'IPC') and consequential proceedings emanating therefrom.



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2. The above FIR has been registered pursuant to an order dated 19.01.2022 passed by the learned Metropolitan Magistrate-08, West, Tis Hazari Court, on an application filed by respondent no.2 under Section 156(3) of the Cr.P.C.

3. It is the case of the respondent no. 2/complainant that on 03.06.2019, respondent no.2 had given a complaint to the SHO PS: Pachim Vihar West regarding the misplacement/loss of certain cheques, including the cheque no. 467181 from the cheque book issued by the State Bank of Patiala, which later merged into State Bank of India. The said complaint was registered as DD No. 30B on the same day. It is further the case of the respondent no.2 that he had instructed the Bank to stop payment against the said cheques. Respondent no.2 claims that it is only on receipt of a legal notice dated 24.04.2021 issued by the petitioner, that respondent no.2 became aware that the said cheque has been misused by the petitioner herein by filling up an amount of Rs.15,00,000/- on the same and presenting the same to the bank for encashment. Respondent no.2 in the complaint stated that he has never travelled to Kolkata in the recent past nor has had any kind of relationship or transaction with the petitioners.

4. The learned counsel for the petitioners submits that the complaint filed by respondent no.2 was a counterblast to proceedings filed by the petitioners against respondent no.2 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act'). He submits that in March



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2021, respondent no.2 had approached the petitioners for purchasing the shares of petitioners' company, M/s Marks N Glix Motors Private Limited. He submits that he had issued the said cheques for the consideration of the purchase of shares of the said company. The documents of transfer of the shares of the company were handed over to respondent no.2 vide bill no. BAL/2020-21/07 dated 25.02.2021 and receipt dated 05.03.2021. On 25.03.2021, when the said cheque was presented for encashment, the same was returned back with the remark '*account closed*'. Thereafter, a statutory notice under Section 138 of the NI Act was accordingly issued to respondent no.2, on 24.04.2021. It is at that stage, that the respondent no.2 filed a false complaint against the petitioners alleging that the cheque had been stolen and misused. He submits that the complaint is merely a counterblast to the complaint filed by the petitioners and is, therefore, filed with a *mala fide* intent and is liable to be quashed. He submits that for the same cause of action and regarding the same cheque, proceedings under Section 138 of the NI Act were earlier initiated by the petitioners in a competent Court at Kolkata, and it is for the respondent no.2 to raise his defence in the said proceedings. Simultaneous proceedings in the form of the present FIR cannot be continued.

5. The above assertions are disputed by the learned Senior Counsel for the respondent no.2, who submits that respondent no.2 had no business dealing with the petitioners and the cheque



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which has been stolen/misplaced by respondent no.2, has been misused by the petitioners. He submits that the complaint filed by respondent no.2 discloses a cognizable offence having been committed and, therefore, FIR has been rightly registered against the petitioners.

6. The learned senior counsel for respondent no.2 further submits that the cheque is purported to be dated 01.03.2021 drawn on State Bank of Patiala, which bank stood merged in State Bank of India way back in 2018.

7. The learned APP also opposes the present petition by stating that the complaint is to be investigated by the police, including on the plea which is now being taken by the petitioners regarding a financial transaction between the petitioners and respondent no.2.

8. I have considered the submissions made by the learned counsels for the parties.

9. In State of *Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335, the Supreme Court delineated the circumstances wherein an FIR may be quashed. However, it also cautioned that such power is to be exercised sparingly and with extreme caution.

10. In *Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) and Another*, 2022 SCC OnLine SC 513, the Supreme Court has recently again cautioned that the High Court in exercise of its power under Section 482 of the Cr.P.C. should



normally not scuttle the investigation at a preliminary stage. I may quote from the judgment of the Supreme Court 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



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*nascent stage, scuttling of the criminal process
is not merited.”*

(emphasis supplied)

11. In the present case, respondent no.2 has alleged that he had made a complaint regarding the loss of these cheques, including the one which is in question, way back on 14.03.2019, 03.06.2019, and 07.09.2019. The cheque in question was one of those cheques which had been mentioned. The respondent no.2 further alleges that it had also issued instructions to the bank to stop payment.

12. It is also important to note that the cheque is issued on the State Bank of Patiala, which had merged with the State Bank of India, long back in 2018.

13. Whether there was a financial transaction between the petitioners and respondent no.2, against which the said cheque had been issued by respondent no.2, are matters to be investigated by the Police. For these disputed questions of fact, the FIR cannot be quashed.

14. As noted hereinabove, the FIR does disclose commission of a cognizable offence and, therefore, the learned Metropolitan Magistrate has rightly directed the registration of the same. The FIR also cannot be quashed on the plea of the petitioners that it is only a counterblast to the complaint filed under Section 138 of the NI Act by them against respondent no.2.



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15. For the abovesaid reasons, I find no merit in the present petition. The same is accordingly dismissed. The pending application also stands disposed of.

16. Needless to state that any observation made in the present order shall in no manner influence the investigation into the FIR.

NAVIN CHAWLA, J

APRIL 29, 2024/rv/RP

Click here to check corrigendum, if any