$~37

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

\+ CRL.M.C. 4141/2022 & CRL.M.A. 17079/2022

SANJAY GOYAL .....Petitioner

Through: Mr. Vikas Arora, Mr. Sandeep Puri and Ms. Radhika Arora, Advocates.

versus

STATE & ANR. .....Respondents

Through: Mr. Shoaib Haider, APP for the State. Mr. Asutosh Sharma and Mr. S. L. Gupta, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>O R D E R</u>

% **05.09.2024**

1. The Petitioner has approached this Court for quashing criminal complaint being CC No. 8884/2020 filing a complaint under Section 138 of the Negotiable Instruments Act.

2. A perusal of the complaint shows that the Complainant and the Petitioner/accused were known to each other. An agreement to purchase the agricultural land belonging to the Complainant bearing Khewat No.102/33, Khatoni No.225/125, 226/126, 230/130 (Khasra No.272), Mauza-Bhoopur measuring about 4 Bighas and 12 Biswas situated at Bhattawali (Bhoopur) at Tibithian Colony, Opposite to Tibithian School, Poanta Sahib, District-Sirmmour, Himachal Pradesh was entered into between the parties.

3. A cheque bearing No.24199 dated 31.12.2017 for an amount of Rs.4,36,000/- was given by the accused to the Complainant as sale price for full and final payment for the said land which was drawn on Oriental Bank

of Commerce, Paonta Sahib. The complainant presented the aforesaid cheque on 17.03.2018 before HDFC Bank Limited, Arakere Branch, Bannergatta Road, Bangalore-560076. The cheque has been returned dishonoured with remarks "payment stopped by the drawer". The legal demand notice dated 16.04.2018 was issued by the Complainant which was replied to by the Petitioner leading to the present complaint.

4. Material on record discloses that the sale deed for the said land has yet not been executed. The short question which arises for consideration is that since the sale deed has not been executed and the cheque had been given only for advance purchase of land, whether an offence under Section 138 of the NI Act is made out or not.

5. The issue raised in this case is no longer *res integra* and has been settled by the Apex Court in Indus Airways Private Limited & Ors. v. Magnum Aviation Private Limited & Anr., **2014 (12) SCC 539**. Paragraph 15 of the said judgment reads as under:-

> *"**15**. The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the NI Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as*

subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the NI Act. The Delhi High Court has travelled beyond the scope of Section 138 of the NI Act by holding that the purpose of enacting Section 138 of the NI Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability."

6. Applying the law laid down by the Apex Court to the facts of this case, in view of the admitted fact that what was given by the accused is only an advance payment and the sale deed having been unexecuted, no debt had arisen at the time when the cheque was dishonoured.

7. In view of the fact that there was no debt at the time when the cheque was dishonored, the offence under Section 138 of the NI Act is not made out. Resultantly, the complaint stands quashed. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

SEPTEMBER 5, 2024
hsk