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

Date of decision: 27th SEPTEMBER, 2024

IN THE MATTER OF:

\+ **CRL.M.C. 4280/2022 & CRL.M.A. 17521/2022**

MUTIVISION COMMUNICATIONS SYSTEM PVT LTD & ORS.
.....Petitioners

Through: Mr. Paran Kumar, Advocate.

versus

HARENDER SINGH .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners have approached this Court challenging Order dated 26.07.2022 passed by the learned Metropolitan Magistrate in CC No.13574/2017 rejecting an application filed by the Petitioners under Section 311 CrPC. The proceedings arise out of a complaint instituted by the Respondent under Section 138 of the NI Act.

2. Petitioner No.1 is a company incorporated under the Companies Act, Petitioner No.2 is the Managing Director of Petitioner No.1/company and Petitioner No.3 is Director of Petitioner No.1/company and all of them are accused in the said complaint under Section 138 of the NI Act.

3. It is stated in the complaint under Section 138 of the NI Act that Petitioner No.2, i.e., Accused No.2 in the complaint, met with the Respondent/Complainant in the year 2016 and told him about the Accused No.1 which at that point of time was being run by the Petitioner No.3 who is

the mother of Petitioner No.2.

4. It is stated that the Petitioner was told about the investment plan in which the Complainant was promised return of 2.5% per month on the investment of Rs.5 lakhs. It is stated that the Complainant arranged for the said amount by taking the help of his friends and relatives. It is stated that Petitioner No.2 issued a post dated cheque of March, 2017 for the sum of Rs.5 lakhs for the return of the principal amount.

5. It is stated that initially the interest was being paid on time to the Complainant but later on, the Complainant stopped getting interest from the Petitioners. It is stated that somewhere in the first half of June, 2017, the Respondent/Complainant met Petitioner No.2/accused and requested him to return the principal amount. It is stated that Petitioner No.2 after calculating the pending/due return, issued two post dated cheques dated 15.06.2017 amounting to Rs.4 lakhs and Rs.2 lakhs in favour of the Respondent.

6. It is stated that after the due date, the Petitioner deposited the cheque bearing No. 568619 dated 15.06.2017 amounting to Rs. 4 lakhs with his banker IndusInd Bank, Sector-7, Rohini but the said cheque had been returned with endorsement '*funds insufficient*' vide returning memo dated 19.06.2017.

7. It is stated that that Legal Notice dated 17.07.2017 under Section 138 of the Negotiable Instruments Act was issued to the Petitioners which was served but payments were not made and therefore complaint has been filed by the Respondent under Section 138 of the NI Act.

8. Trial has commenced. The Petitioners have filed an application under Section 311 CrPC summoning of two witnesses, i.e., Navneet Singh and Aditya Singh. The reason given in the application under Section 311 CrPC

was that the Complainant was in the habit of filing false and frivolous cases of cheque bouncing against persons which was confirmed by DW-2/Sandeep Arya. It is stated that the Respondent/Complainant has filed 15-20 cases of cheque bouncing against various people at different places. It is stated that the Respondent/Complainant has filed five cases of cheque bouncing against one Aditya Singh. It is stated in the application that one Navdeep Singh, Advocate, gave him Rs.45,000/- to the Complainant but the Complainant was refused to acknowledge the same. Paragraph 6 to 9 of the application under Section 311 CrPC reads as under:-

> *"6. It is submitted that Sh. Navneet Singh, is an Advocate, on behalf of Sh.Sandeep Arya as well as Mr. Aditya, and was present before this Hon'ble Court during the Cross-examination of accused no.2 and DW-2.*
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> *7. It is submitted that Sh. Navneet Singh, Advocate, is aware of the various cases filed by the complainant against other person(s), which when brought before this Hon'ble Court, the same would confirm that the complainant is in a habit of filling various false and frivolous cases against innocent persons through himself or through his friends and relatives, who are also represented by same advocate. It is further submitted that Sh. Sandeep Arya, being a layman was not in a position to give details of the various cases filed by the complainant through himself or his friends and relatives, whereas the said details can be given by Sh. Navneet Singh, Advocate, who has privy to such details and information.*
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> *8. It is further submitted that Sh. Aditya- is also another victim of the complainant and therefore is in a position to bring forth this Hon'ble Court the actual persona of the complainant and his methods and*

tactics in filling false and frivolous cases against innocent person(s) including the accused, Sandeep Arya and Mr. Aditya etc.

9. It is submitted that in view of the above and in view of the deposition of Sh. Sandeep Arya bringing forth the name of Mr. Navneet Singh, Advocate and Mr. Aditya, pertaining to their knowledge of the complainant and the various cases filed by him and his friends and relatives against innocent persons, it is now important, trite, necessary and pertinent and also for the proper adjudication of the present case to bring out the truth, that, the following witnesses be summoned or allowed to be brought by the accused to depose before this Hon'ble Court in the interest of justice:

A. Mr. Navneet Singh, Advocate, Chamber No.461, Western Wing,Tis Hazari Courts, Delhi-110054.

B. Mr. Aditya Singh. "

9. The said application has been rejected by the order impugned herein on the ground that the examination of these witnesses is not relevant for the purposes of proving offences under Section 138 of the NI Act. It is this order which is being challenged by the Petitioners in the present petition.

10. Learned Counsel for the Petitioner states that the Respondent/Complainant is in the habit of filing false and frivolous cases against various persons and therefore examination of these witnesses is necessary.

11. Section 138 of the NI Act creates an offence against a person who had issued a cheque for repayment of debt or other liability and if that cheque gets dishonoured for insufficient funds or the cheque is returned either

because of the money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount to be paid from that account by an agreement made with that bank. The proviso to Section 138 of the NI Act lays down the conditions before Section 138 of the NI Act is instituted. Section 138 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 extend to 68[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, 69[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 or other liability" means a legally enforceable debt or other liability."

12. A perusal of the application under Section 311 CrPC does not indicate that these two witnesses are necessary for the purposes of the complaint under Section 138 of the NI Act.

13. It is not the case of the Petitioner that these witnesses would depose as to the existence of a loan or that the cheque was given as a security. These witnesses cannot depose regarding the conditions which are *sine qua non* for registering a case under Section 138 of the NI Act. The purport for application under Section 311 CrPC is that the Court can call witnesses or can call for documents which are necessary for the ends of justice. The fact that the Complainant is in the habit of filing repeated cases under Section 138 of the NI Act is immaterial for the purpose of an offence under Section 138 of the NI Act. If all the ingredients are satisfied and if the cheque has been given for satisfying the debt, then it does not matter if the Complainant have filed several cases under Section 138 of the NI Act. Filing of the frivolous applications will not delay the trial which appears to be the motive of the Petitioner.

14. In view of the above, the view taken by the Court below that the

examination of the witnesses mentioned in the application have no relation to the matter at hand does not require interference.

15. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 27, 2024
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