



\$~66

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

+ CRL.M.C. 2904/2021 & CRL.M.A. 18314/2021

RAJ KUMARI

.....Petitioner

Through: Mr. Abhay Kaushik and Ms.Himani
Babbar, Adv.

versus

NISHANT & ORS.

.....Respondents

Through: Mr.Sachin, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

%

10.12.2024

1. The present petition has been filed by the petitioner praying for quashing of the summoning order dated 23.02.2021 whereby the learned Magistrate had summoned the petitioner to stand trial under Section 138 NI Act. Further, prayer has been made to quash the complaint case No.332/2021 titled as “*Nishant vs. Miracle Miles India Private Limited & Ors.*” pending before the Court of learned Metropolitan Magistrate (NI Act), North, Delhi.

2. The learned counsel appearing on behalf of the petitioner submits that the cheques in question were issued by respondent no.2 company whereas the petitioner was only working in the capacity of a Director of the said company till 09.03.2020.

3. He submits that as per the allegations made in the complaint, the cheque was issued by the accused no.1 company on 23.07.2020 which got dishonoured on 31.08.2020. In lieu of the said dishonoured cheque the



respondent no.2-company (accused no.1) issued another cheque on 03.10.2020 which again got dishonoured on 07.11.2020. He submits that it is the second cheque dated 03.10.2020, dishonoured on 07.11.2020, which is the subject matter of the present complaint.

4. He submits that much prior to the issuance of the said cheque, the present petitioner had resigned as Director of the accused company i.e. on 09.03.2020. Accordingly, the petitioner was not responsible to the respondent no.2 company for the conduct of its business at the time when the cheque was issued or at the time when the same got dishonoured.

5. In support of his contention, he has invited the attention of the Court to the DIR-12 filed alongwith the present petition which shows that the petitioner had resigned on 09.03.2020.

6. He submits that the offence under Section 138 can be said to have been committed only when the cheque is dishonoured and the payment is not made by the drawer of the cheque pursuant to the 15 days notice given in terms of Section 138 NI Act.

7. He further submits that the allegations in the complaint are essentially against accused nos. 2 and 3 and not against the present petitioner, who was arraigned as accused no.5.

8. *Per contra*, the learned counsel appearing on behalf of the respondent no.1 fairly concedes that the petitioner had resigned as Director of the respondent no.2 company on 09.03.2020. He, however, contends that there are allegations of cheating against the present petitioner in the complaint, more particularly in para 4 thereof.

9. He submits that undoubtedly the present petitioner has been summoned to stand trial under Section 138 NI Act but at a subsequent stage



there is every possibility that the charge may be amended and the petitioner may be summoned to stand trial under Section 420 IPC.

10. I have heard the learned counsel appearing on behalf of the petitioner, as well as, learned counsel appearing on behalf of the respondent/complainant and have perused the record.

11. It is not in dispute that the petitioner had resigned as Director of the respondent no.2/accused company on 09.03.2020, much prior to the issuance and dishonour of the cheque in question. It is also not alleged in the complaint that at the time when the cheque was issued or dishonoured the present petitioner was responsible to the respondent no.2/accused company for its day-to-day affairs.

12. The learned counsel appearing on behalf of the respondent no.1/accused has also fairly conceded that the petitioner had already resigned at the time when the cheque was issued.

13. In this backdrop this Court is of the view that the petitioner cannot be held liable for the offence under Section 138 of NI Act and accordingly the complaint under Section 138 of NI Act is not maintainable against him.

14. Insofar as the submission of the learned counsel appearing on behalf of the respondent no.1 that the complaint contains allegations of cheating against the present petitioner, suffice it to say that the complaint has been filed under Section 138 of the NI Act. Even the prayer made in the complaint case seeks summoning of the accused persons for the offence under Section 138 of the NI Act.

15. Insofar as allegations contained in para 4 of the complaint are concerned, this Court is of the view that even taking the said allegations on its face value, no ingredients of the offence under Section 420 IPC are made



out against the present petitioner, inasmuch as there is no averments made that the petitioner/accused no.5 was having intention to defraud or the dishonest intention from the very beginning or inception which is necessary to make out an offence under Section 420 IPC. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. And Ors. Vs. State of U.P & Anr., 2024 SCC OnLine SC 2248.***

16. In view of the above discussion, the impugned summoning order dated 23.02.2021, as well as, the complaint case bearing No.332/2021 titled as “*Nishant vs. Miracle Miles India Private Limited & Ors.*” are liable to be quashed *qua* the present petitioner. Ordered accordingly.

17. The petition stands disposed of.

VIKAS MAHAJAN, J

DECEMBER 10, 2024

N.S. ASWAL