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

\+ CRL.M.C. 5757/2022, CRL.M.A. 22664/2022

SHIVANI MALHOTRA .....Petitioner

Through: Mr. Vinay Jaidka, Mr. Deepak Diwan and Ms. Jayati Jaidha, Advocates.

versus

NIDHI ARORA & ANR. .....Respondents

Through: Mr. Adesh Lal with Mr. Raghav Parwatiyar, Advocates.

AND

CRL.M.C. 1177/2023, CRL.M.A. 4533/2023

RAVISH MALHOTRA .....Petitioner

Through: Mr. Vinay Jaidka, Mr. Deepak Diwan and Ms. Jayati Jaidha, Advocates.

versus

NIDHI ARORA .....Respondent

Through: Mr. Adesh Lal with Mr. Raghav Parwatiyar, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **24.07.2024**

1. By way of the present petitions, the petitioners seek quashing of the Complaint Case being Ct. case No.7695/2019 titled 'Nidhi Arora vs. JGJ Gym & Spa & Ors.' pending before the Learned M.M. filed by the respondent for offences punishable under Section 138 Negotiable Instruments Act, 1881. As the petitions being Crl. MC No. 5757/2022 and

Crl. MC No. 1177/2023 are taken up for hearing together and common submissions are addressed, the same are being disposed of by a common order.

2. Facts, as discernible from the record, are that the respondent/complainant alleged that the accused No. 2-4 dishonestly induced the complainant into joining as a partner in *M/s JGJ GYM & SPA* where the accused No.2-4 were partners. It is the case of the complainant that the accused No. 2-4 entered into an addendum dated 21.07.2018 with the complainant, wherein the complainant was induced as a partner with 33.34% of the ownership rights. That further, on 17.09.2018, the accused entered into third addendum with the complainant wherein the complainant's ownership was increased to 42% from 33.34 %. The complainant paid a sum of Rs. 3,78,000/- as security to the landlord of the gym and further a sum of Rs. 12 lacs were transferred by the complainant to the account of accused No. 3 *Shivani Malhotra.* On repeated requests of the complainant for refund of her money, she was handed two cheques bearing No.112790 and 142562 both dated 31.07.2019. Upon presentation, cheque No. 142562 dated 31.07.2019 of Rs.19,78,000/- was dishonoured for the reason *'Funds Insufficient.'* Subsequently, a legal notice dated 26.08.2019 was issued against the petitioners, requesting for payment of the cheque amount, however, even after the lapse of 15 days from the date of service of the demand notice, the petitioners failed to make the payment for the same and hence the subject complaint case came to be filed. Further, it is also stated that another cheque bearing No. 112790 of Rs.62,89,261/- was also dishonoured for the same reason for which the complainant has sent a

separate legal notice and filed a separate complaint under Section 138 NI Act.

3. Learned Counsel of the petitioner/*Ravish Malhotra* contends that the present complaint case is liable to be quashed as the respondent/complainant herself was the major shareholder in the partnership company and was also responsible to the said company for the conduct of its business at the time of offence. It is stated that the respondent herself was joint holder of the bank account maintained by accused No.1 i.e. *M/s. JGJ N SPA* and was well aware that there was insufficient balance in the account. Lastly, it is submitted that in the entire complaint there is no specific averment that the petitioner was in charge and responsible for the conduct of the business of the company, thus continuation of the present proceedings against the petitioner would be an abuse of the process of law.

Insofar as the petitioner/*Shivani Malhotra* is concerned, it has been submitted by the learned counsel that the cheque in question had not been drawn by the petitioner herein. It is stated that the cheques in question also do not bear the signature of the petitioner. Further, it is submitted that the respondent/complainant herself was the joint holder of the bank account maintained by accused No. 1 i.e. M/s. JGJ N SPA and therefore it can be said that the respondent/complainant herself was fully competent to manage all the affairs of the bank account of accused No.1 company. Lastly, it is stated that there are no specific allegations against the petitioner/*Shivani Malhotra*.

4. Before proceeding to deal with the merits of the case, this Court deems it fruitful to restate the legal position regarding offences under Section 138 NI Act.

5. An offence under Section 138 NI Act is made out, when the conditions stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque, which has been drawn on an account maintained by the drawer, ought to be 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: <u>MSR Leathers v. S. Palaniappan & Anr</u>.[1], <u>Charanjit Pal Jindal v. L.N. Metalics</u>[2] and <u>N. Harihara Krishnan v. J. Thomas</u>[3].]

6. At the outset, it must be noted that the petitioner/*Ravish Malhotra*, at the time of the framing of the notice under Section 251 C.r.P.C., has himself acknowledged/admitted the issuance of cheque as well as the fact that the same bears his signature. He has, however, stated that he had not filled the other particulars. It is also stated by the petitioner that he has not received any legal demand notice.

As also to be noted that petitioner/*Shivani Malhotra*, at the time of the

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[1] (2013) 1 SCC 177
[2] (2015) 15 SCC 768

framing of the notice under Section 251 C.r.P.C., has stated that cheques in question do not bear her signatures. And that she has also not received the legal demand notice.

7. In regard to the submission relating to filling of particulars, the said issue is no longer res integra. The Supreme Court, in various decisions, clearly laid down that even in such situations, Section 138 NI Act would be attracted. In Bir Singh v. Mukesh Kumar[4] , it has been observed that:—

> *"33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted."*

8. The said legal position has been reiterated by the Supreme Court in Oriental Bank of Commerce v. Prabodh Kumar Tewari[5] and K. Ramesh v. K. Kothandaraman[6] In Oriental Bank of Commerce (Supra), the Supreme Court observed:—

> *"18. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards*

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[3] (2018) 13 SCC 663
[4] (2019) 4 SCC 197
[5] 2022 SCC OnLine SC 1089

[6] 2024 SCC OnLine SC 531

payment of a debt or in discharge of a liability.

19. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability."

9. What can be culled out from the discussion above is, the mere fact that the particulars were filled by a person other than the drawer itself does not absolve him of the liability under Section 138 NI Act, especially when the petitioner/*Ravish Malhotra* has admitted his signatures on the said cheque.

10. As regards to the submission of the petitioners that the respondent herself was responsible for day to day affairs of the company and was aware of insufficient balance in the account of the said company, the same has been denied by the respondent by contending that she had ceased to be a partner of the said partnership firm on 31.07.2019 i.e., the day two cheques were given to her towards full and final settlement. From above, it is apparent that on the date of dishonour of cheques, she was neither managing the affairs of the company nor was she aware about the insufficiency of funds in the firm's bank account.

Furthermore, the submission of the petitioner/*Shivani Malhotra* that there is no specific allegation in the complaint against the petitioner herein is misplaced inasmuch as it is specifically stated in the complaint that the petitioner/*Shivani Malhotra* induced the respondent to transfer a sum of Rs. 12 lacs to her personal account. Therefore, it is apparent that the money has travelled to the account of the petitioner/*Shivani Malhotra*. The other contention that no demand notice was received by her would require evidence to be led and cannot be gone into at this stage.

11. In light of the discussion above, this Court finds no merit in the above-noted petitions and the same are dismissed alongwith pending applications.

MANOJ KUMAR OHRI, J

JULY 24, 2024
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