



2024:DHC:2623



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

Date of decision: 01.04.2024

(24)+ CRL.M.C. 5999/2022

(25)+ CRL.M.C. 6015/2022

PARAM PREET SINGH

..... Petitioner

Through: Mr.Rajeev Sirohi, Adv.

versus

STATE GOVT OF NCT OF DELHI & ORS..... Respondents

Through: Ms.Priyanka Dalal, APP.

Mr.Ajay Khanna, Mr.Manuraj

Pillai, Advs. for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 24.12.2019 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-02, South District, Saket Courts, New Delhi (hereinafter referred to as the 'ASJ') in Criminal Revision Petitions No.111/2019 and 112/2019, both titled ***Sunil Kumar Dahiya & Anr. v. State & Anr.*** (hereinafter collectively referred to as the 'Revision Petitions'), allowing the said Revision Petitions.

2. The only facts relevant to note herein are that the summons in the complaint cases filed by the petitioner herein, being CC nos.



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469870/2016 and 475877/2016, both titled ***Param Preet Singh v. VCORP Developments Pvt. Ltd. & Ors.*** (hereinafter collectively referred to as the ‘Complaint Cases’), filed by the petitioner herein against the respondent nos.2 to 4 herein, under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (in short, ‘NI Act’) were issued to the respondent nos.2 to 4 by the learned Metropolitan Magistrate-02 (NI Act), South District, Saket Courts, New Delhi (hereinafter referred to as the ‘Trial Court’).

3. The respondent nos.3 and 4 filed an application under Section 258 of the Cr.P.C. praying for their discharge in the complaint cases, contending therein that as their bank account had been seized/attached pursuant to the FIR No.215/2014 registered at Police Station: Sushant Lok, Gurugram, Haryana under Section 420/406 of the IPC, the cheques in question could not be honoured on presentation, and, therefore, the complaint under Section 138 of the NI Act was not maintainable.

4. The said application came to be dismissed by the learned Trial Court vide its Order dated 11.10.2018, *inter alia* observing that the application under Section 258 of the Cr. P.C. is not maintainable.

5. Aggrieved to the said order, the respondent nos.3 and 4 filed the abovementioned Revision Petitions, which were allowed by the learned ASJ vide the Impugned Order, observing as under:

“11. In view of the abovementioned observations, I am of the considered view that in the present case also, cheques in question have been issued as post dated cheques. Admittedly, account of the accused had been attached in FIR No. 215/2014 PS Sushant Lok,



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Gurgaon dated 20.05.2014 and FIR No. 108/2014 dated 10.09.2014 PS EOW, Mandir Marg, New Delhi. There is nothing on record to show that accused could operate their account at the relevant time when the cheque in question were returned unpaid due to reason "Account Blocked", Since, payment was stopped due to abovementioned reason, in view of the same, the accounts in question were not capable of being operated by the accused at the relevant time, hence, case of the accused does not fall within the purview of section 138 of Negotiable Act.

12. Considering the overall facts and circumstances and in view of the abovesaid discussions, both the revision petitions are allowed and order dated 11.10.2018 passed by Ld. MM is set aside."

6. The learned counsel for the petitioner submits that as an application under Section 258 of the Cr.P.C. is not maintainable, the ASJ/Revisionist Court has erred in setting aside the Order of the learned Trial Court and thereby dismissing the complaint filed by the petitioner herein under Section 138 of the NI Act as against the respondent nos.3 and 4. In support he places reliance on the judgment of the Supreme Court in ***Meters and Instruments Pvt. Ltd. & Anr. v. Kaanchan Mehra***, (2018) 1 SSC 560.

7. I have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same. Once the Court found that the complaint itself was not maintainable as the account of the respondent no.2 herein had been attached pursuant to the registration of the FIR, and there is no challenge to the said finding of the learned ASJ, in my view, no fault can be found with the Impugned



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Order. No useful purpose would be served in keeping alive a complaint, which is otherwise not maintainable. In fact, the power under Section 397 Cr.P.C. can be exercised by the learned Sessions Court *suo moto*.

8. Keeping in view the above, I am of the opinion that this would not be a fit case where the Court should exercise its power under Section 482 of the Cr.P.C.

9. The petitions are accordingly dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 1, 2024/Arya/AS

Click here to check corrigendum, if any