



2024-DIG-3916



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 26.04.2024
Pronounced on: 15.05.2024

+ CRL.M.C. 6094/2022 & CRL.M.A. 23877/2022
+ CRL.M.C. 6095/2022 & CRL.M.A. 23881/2022
+ CRL.M.C. 6096/2022 & CRL.M.A. 23889/2022
+ CRL.M.C. 6097/2022 & CRL.M.A. 23894/2022

HARPREET SAHNI & ANR. Petitioners
Through: Mr.Sanjay Madan, Adv.
versus

SHRICHAND HEMNANI Respondent
PUJA HEMNANI Respondent
ASHA HEMNANI Respondent
VINOD HEMNANI Respondent
Through: Mr.Neeraj Gupta &
Mr.Kamal Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

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 20.12.2019 passed by the learned Metropolitan Magistrate-02 (NI Act), North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case No.5505/2019, titled *Shrichand Hemnani v. Mother's Pride Punjabi Bagh & Ors.* (in CRL.M.C. 6094/2022); Complaint case No. 5503/2019 titled *Puja Hemnani v. Mother's Pride Punjabi Bagh &*



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Ors. (in CRL.M.C. 6095/2022); Complaint case No. 5504/2019 titled *Asha Hemnani v. Mother's Pride Punjabi Bagh & Ors.* (in CRL.M.C. 6096/2022) and Complaint case No. 5501/2019 titled *Vinod Hemnani v. Mother's Pride Punjabi Bagh & Ors.* (in CRL.M.C. 6097/2022) (hereinafter collectively referred to as the 'Complaint Cases'), filed by the respondent(s) herein, under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act').

2. As common questions of law and facts arise in these petitions, and common submissions have been made by the learned counsels for the parties, these petitions are being considered and disposed of by way of this common judgment.

3. To appreciate the submissions made by the learned counsels for the parties, the following background facts leading to the filing of the present petitions deserve notice:

- a) The above complaint cases have been originally filed by the respondent(s) herein, making 10 (ten) accused including Presidium Eduvision Trust, through its Trustees.
- b) In the Complaints, it is averred that somewhere in December, 2014, the respective respondent(s)/complainant(s) had contacted either the accused no.3, that is, Ms.Sudha Gupta, Chairman of Mother's Pride Punjabi Bagh and Presidium Eduvision Trust or/and the accused no.2, that is, Presidium Eduvision Trust, through its trustees, for admission of the child in the school of Mother's Pride Educational Institute Pvt. Ltd.. It was alleged that the accused nos.3 to 10 came in contact of the respondent(s) and the family members, and represented and



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assured them about their position, *inter alia*, in the accused no.2, that is, Presidium Eduvision Trust, and also claimed about their relationship with the Mother's Pride Educational Institute Pvt. Ltd..

- c) It is alleged that based on their representation, the respondent(s) have allegedly extended loans to the accused, in the joint name of accused no.1-Mother's Pride Punjabi Bagh and the accused no.2-Presidium Eduvision Trust. It is alleged that the accused were to pay interest at the rate of 19.5% *per annum* on the loan amount for the period of the loan. It is alleged that till the month of June, 2018, accused nos.1 to 10 paid interest on the said loan, however, thereafter they defaulted in payment of interest;
- d) It is claimed that on 01.12.2018, when the respondent(s) deposited the cheques issued by the accused nos.1 to 10 for repayment of the loan, the same were dishonoured with the remark '*Funds Insufficient*'. It is averred that the respondent(s) thereafter issued respective legal notices dated 28.01.2019 to the accused nos.1 to 10 to repay the cheque(s) amount, however, the same was not paid. The respondent(s) in the original complaint(s) also pleaded and made similar allegations, including as under (in Complaint Case No.5505/2019):

"20. That it was represented by Accused nos 1 to 10 that the accused no. 1 is a unit of Mothers Pride Education Institution Pvt. Ltd. and it was further represented by them that Accused no. 3 is chairman of entire Mothers Pride Group and also of addressee no. 1 & 2. Accused no. 4 is proprietor of Accused no. 1 and she alongwith accused nos. 3, 5, 6, 7, 8, 9



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and 10 negotiated the entire deal/transaction personally. Accused nos. 3 to 10 are also authorized signatory and person in charge of the entire business transaction of accused nos 1 & 2.

It was also informed to the complainant that **Presidium Eduvision Trust is the senior wing of the Mothers Pride Education institution for school going kids. Accused nos. 1 and 2 in connivance of each other have taken the loan amount and issued the repayment cheques.**

Accused nos. 1 to 10 have hatched a conspiracy in connivance of each other against Complainant and cheated him and his family with huge amount, accordingly, Accused are responsible for all the aforesaid acts and deeds.

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23. That accused nos. 1 and 2 are being run managed by Mothers Pride Education Institution Pvt. Ltd. and accused nos. 3 to 10 are actively involved in handling and is in charge of the day to day affairs and business of accused no. 1 and accused no.2. Accused nos 3 to 10 have personally entered into transactions and convinced the complainant to enter into the said transaction. Accused nos 1-10 falsely and dishonestly represented and assured the Complainant about the repayment of loan amount vide aforesaid cheque. However, conduct of accused nos 1-10 clearly proves that they have cheated Complainant with malafide intentions and caused huge wrongful losses to Complainant by making false representations and gained wrongful gains for themselves. Accused has induced Complainant with his false assurances and representations to enter into the said transaction and to extend the loan facility to accused. Accused's intentions were malafide from day one and accused has cheated the Complainant."



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- e) It appears that in the pre-summoning evidence, the respondent(s) summoned the Manager of Axis Bank, Rajouri Garden, Delhi as a witness before the learned Trial Court to give the pre-summoning evidence on the Bank Account maintained by the accused no.2 therein, that is, Presidium Eduvision Trust, with the said bank. It is stated that on 02.05.2019, the official from the Axis Bank appeared before the learned Trial Court and placed all the account related records, including the Account Opening Form and the Trust Deed of the Presidium Eduvision Trust.
- f) The respondent(s) claimed that it was only then, that for the first time, the respondent(s), from the Trust Deed and the Account Opening Form of the Presidium Eduvision Trust, came to know that the said Trust had three Trustees, that is, the petitioners herein and the accused no.9 in the Complaint cases. The respondent(s) claimed that these Trustees were fully involved in the subject transaction, however, had concealed that they were the Trustees of the accused no.2 Trust.
- g) The respondent(s) then filed an application under Section 319 of the Cr.P.C. praying for impleadment of the petitioners as additional accused in the Complaint cases. The respondent(s) further claimed that as notice under Section 138 of the NI Act has been served on the Trust through its Trustees, hence the requirement of Proviso (b) to Section 138 of the NI Act has been duly complied with, by the respondent(s).



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- h) The said application was allowed by the learned Trial Court by the Impugned Order, and the Trust and its three Trustees have been summoned as accused in the Complaint Cases filed by the respondent(s).
4. The petitioners have filed the present petitions being aggrieved of the said Order which summons the petitioners as accused in the above Complaint Cases.

Submissions of the Learned Counsel for the Petitioners:

5. The learned counsel for the petitioners submits that for maintainability of a complaint under Section 138 of the NI Act read with Section 142 of the NI Act, service of notice under Proviso (b) to Section 138 of the NI Act on the accused is mandatory. He submits that in the Complaint Cases, admittedly, the alleged demand notice dated 28.01.2019 was not addressed to the petitioners in their individual capacity. He submits that, therefore, the complaint(s) against the petitioners are not maintainable and the petitioners cannot be summoned in the same. In support, he places reliance on the judgments of the Supreme Courts in *Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr.*, (2023) 8 SCC 473; the judgment of the High Court of Gujarat in *Somesh Sarjivan Jain v. State of Gujarat & Anr.* Neutral Citation no. 2012:GUJHC:11959; High Court of Madhya Pradesh in *Sanjay Singh Bisen v. Devendra Verma*, (Order/Judgment dated 02.02.2023 in Criminal Revision no.2611/2018); *Sandeep Sabuu v. Gwalior Vyapar Mela Pradhikaran* 2016 SCC OnLine MP 67; and of this Court in *Amit*



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Kumar Mishra v. The State Govt. of NCT of Delhi & Anr. 2020 SCC OnLine Del 2199.

6. He further submits that merely by amending the complaints and now, in the relevant paragraphs, making averments against *inter alia* the petitioners, and by merely changing the number of the accused, the respondent(s) cannot be said to have satisfied the requirements of Section 141 of the NI Act. He submits that, therefore, even otherwise the Complaint Cases, as against the petitioners, are liable to be dismissed.

Submissions of the Learned Counsel for the Respondent(s):

7. On the other hand, the learned counsel for the respondent(s) submits that the Trust (the accused no.2 in the Complaint Cases) had been issued the legal/demand notice dated 28.01.2019, to be served through its Trustees. The respondent(s) were not aware of the Trustees of the said Trust till the deposition of the official of the Axis Bank. He submits that though the respondent(s) had dealt with the petitioners, they were not aware of their status as Trustees of the accused no. 2. He submits that the notice addressed to the Trust through its Trustees, is sufficient notice to the Trustees themselves in their individual capacity as well. In support, he placed reliance on the judgment of the Supreme Court in ***Kirshna Texport & Capital Markets Ltd. v. Ila A. Agrawal & Ors.*** (2015) 8 SCC 28.

8. Placing reliance on the judgment of the Supreme Court in ***Hardeep Singh v. State of Punjab & Ors.*** (2014) 3 SCC 92, he submits that the purpose of Section 319 of the Cr. P.C. is to ensure



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that the real culprit should not get away unpunished. He submits that once it is discovered that the petitioners are the Trustees of the accused no.2 Trust and are also alleged to be involved in the alleged transactions with the respondent(s), they are liable to be proceeded against in terms of Section 141 of the NI Act. He submits that the purpose of Section 319 of the Cr. P.C. is to address such a situation.

9. He also places reliance on the judgment of the High Court of Madras in *Abraham Memorial Educational Trust v. C. Suresh Babu*, 2012 SCC OnLine Mad 2986, to contend that under Section 141 of the NI Act, all the Trustees of a Trust would be equally liable to be proceeded against under Section 138 of the NI Act.

Analysis And Findings:

10. I have considered the submissions made by the learned counsels for the parties.

11. Section 138 of the NI Act is reproduced herein below:

“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 be extended to two years, or



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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, 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 of other liability” means a legally enforceable debt or other liability.”

(Emphasis Supplied)

12. Proviso (b) to Section 138 of the NI Act read with Section 142 of the NI Act shows that for the maintainability of a complaint for an offence under Section 138 of the NI Act, the payee or the holder in due course of the cheque, as the case may be, should make a demand for the payment of the said amount of money by giving a notice in writing ‘*to the drawer of the cheque*’ within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The notice, therefore, is to be given ‘*to the drawer of the cheque*’.



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13. Section 7 of the NI Act defines the term ‘*drawer*’ as the maker of the bill of exchange or cheque.

14. In the present cases, the cheques are drawn by the accused no.2 Trust. It is, therefore, the ‘*drawer of the cheques*’. The notice has, admittedly, been issued to the ‘*drawer*’, that is, the accused no.2-Trust. The same has been addressed to be served on the drawer/Trust through its Trustees. Presently, it is not disputed by the petitioners that they are the Trustees of the accused No.2-Trust.

15. Section 141 of the NI Act is reproduced herein below:

“Section 141. Offences by companies.

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.



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(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section, —

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

16. Section 141 of the NI Act states that where the offence under Section 138 of the NI Act is committed by a company, every person who, at the time the offence was committed, was in-charge and was responsible to the company for the conduct of the business of the company, shall be *‘deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly’*. Explanation (a) to Section 141 of the NI Act states that for the purpose of Section 141 of the NI Act, the term ‘company’ means any body corporate and includes a firm or other association of individuals. It is not disputed by the petitioners that a Trust will be covered by the above definition of the term ‘company’ and, therefore, the Trustees would be persons who would be responsible to the Trust for the



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conduct of its business and be in-charge of its business and, therefore, deemed to be guilty of the offence under Section 138 of the NI Act. Reference in this regard can also be made to the judgment of the High Court of Madras in ***Abraham Memorial Educational Trust*** (Supra).

17. As noticed hereinabove, the only plea of the petitioners is the lack of notice under Proviso (b) to Section 138 of the NI Act and the purported lack of pleadings in the Complaint Cases against the petitioners herein in their individual capacity.

18. As far as the lack of notice under Proviso (b) to Section 138 of the NI Act is concerned, as has been held hereinabove, the said provision requires notice to be sent to the ‘drawer’. Admittedly notice(s) in the present Complaint Cases has been sent to the drawer, that is, the accused no.2-Trust.

19. In ***Kirshna Texport and Capital Markets Ltd.*** (supra), the Supreme Court, considering the provision of Proviso (b), Section 141 and Section 7 of the NI Act has held as under:

“15. With these principles in mind, we now consider the provisions in question. According to Section 138, where any cheque drawn by a person on an account maintained by him is returned by the bank unpaid for reasons mentioned in the said section such person shall be deemed to have committed an offence. The proviso to the section stipulates three conditions on the satisfaction of which the offence is said to be completed. The proviso inter alia obliges the payee to make a demand for the payment of the said amount of money by giving a notice in writing to “the drawer of the cheque” and if “the drawer of the cheque” fails to make the payment of the said amount within 15 days of the receipt of the said notice, the stages stipulated in the proviso stand



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fulfilled. The notice under Section 138 is required to be given to “the drawer” of the cheque so as to give the drawer an opportunity to make the payment and escape the penal consequences. No other person is contemplated by Section 138 as being entitled to be issued such notice. The plain language of Section 138 is very clear and leaves no room for any doubt or ambiguity. There is nothing in Section 138 which may even remotely suggest issuance of notice to anyone other than the drawer.

***16.** Section 141 states that if the person committing an offence under Section 138 is a company, every Director of such company who was in charge of and responsible to that company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a company would be run by living persons who are in charge of its affairs and who guide the actions of that company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the Directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. It is precisely for this reason that no notice is additionally contemplated to be given to such Directors. The opportunity to the “drawer” company is considered good enough for those who are in charge of the affairs of such company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the*



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trial and certainly not at the stage of notice under Section 138.

17. If the requirement that such individual notices to the Directors must additionally be given is read into the provisions concerned, it will not only be against the plain meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. In a given case the ordinary lapse or negligence on part of the company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the company. It would be unnecessary at that point to issue notices to all the Directors, whose names the payee may not even be aware of at that stage. Under second proviso to Section 138, the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso gives 15 days' time to the drawer to make the payment of the amount and escape the penal consequences. Under clause (b) of Section 142, the complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus, a complaint can be filed within the aggregate period of seventy-five days from the dishonour, by which time a complainant can gather requisite information as regards names and other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to clause (b) of Section 142 of the Act, such period is non-extendable. The summary remedy created for the benefit of a payee of a dishonoured cheque will thus be rendered completely cumbersome and capable of getting frustrated.

18. In our view, Section 138 of the Act does not admit of any necessity or scope for reading



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into it the requirement that the Directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such Directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore, neither on literal construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act.”

20. The above judgment has been followed by a learned Single Judge of this Court in ***DSC Ltd. v. Dada Jeetu Buildcon Pvt. Ltd.*** Neutral Citation no.2018:DHC:7297, by observing as under:

“13. Vicarious liability is created by section 141 as the company being a juristic entity, is run by living persons who are in charge of its affairs and who guide the actions of that company and that if such company is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. That is the reason that no notice is additionally contemplated to be given to such Directors.

14. The opportunity to the “drawer” company is considered good enough for those who are in charge of the affairs of such company. Lapse or negligence on part of the company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the company. There is no requirement that the Directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such Directors who are



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in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138 and would be liable without even being issued individual notices.”

21. The above judgments would squarely apply to the facts of the present cases. There is no requirement for separate notice(s) to be issued to each of the Trustees of the accused no.2-Trust to make them vicariously liable and to be proceeded against in terms of Section 138 of the NI Act read with Section 141 of the NI Act. The notice having been served on the Trust through its Trustees, all the Trustees are deemed to have been duly served with the legal/demand notice(s), thereby meeting the requirement of Proviso (b) to Section 138 of the NI Act.

22. As far as the plea of the learned counsel for the petitioners that the respondent(s) has merely changed the number of the accused in the complaints and there is a lack of necessary pleadings in the complaint cases in this regard, I again find no merit in the same.

23. In the Amended Complaint case(s), the respondent(s) has made the following averments (reproduced from Complaint Case No.5505/2019; the other Complaints also contain similar allegations/pleadings):

“22. That only after evidence of CWI (Bank Officer of accused's bank), Complainant came to know that accused no. 11 and 12 are also trustees of the accused no. 2. Prior to that accused nos. 11 and 12 never disclosed that they are trustees of the accused no. 2. Accused nos. 11 and 12 always persuaded the complainant to give the loan. accused nos. 11



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and 12 were also involved in the entire transaction. From the very first day accused no. 11 and 12 connived with other accused persons and cheated the complainant.

23. That it was represented by Accused nos.1 to 12 that the accused no. 1 is a unit of Mothers Pride Education Institution Pvt. Ltd. and it was further represented by them that Accused No. 3 is chairman of entire Mothers Pride Group and also of addressee no. 1 & 2. Accused no.4 is proprietor of Accused no.1 and she alongwith accused nos. 3, 5, 6, 7, 6, 9, 10, 11 and 12 negotiated the entire deal/transaction personally. Accused nos. 3 to 12 are also authorized signatory and person in charge of the entire business transaction of accused nos 1 & 2. Accused nos.9, 11 and 12 are Trustees to accused no.2 and also incharge of entire business and activities of accused no.2. Hence, Accused nos. 9, 11, and 12 are responsible for all the acts and deeds of the accused no.2. It was also informed to the complainant that Presidium Eduvision Trust is the senior wing of the Mothers Pride Education institution for school going kids. Accused nos. 1 and 2 in connivance of each other have taken the loan amount and issued the repayment cheques. Accused nos. 1 to 12 have hatched a conspiracy in connivance of each other against Complainant and cheated him and his family with huge amount, accordingly, Accused are responsible for all the aforesaid acts and deeds."

24. In my view, the above averments are sufficient for the purpose of attracting Section 141 of the NI Act against the petitioners. Even otherwise, in their capacity as Trustees of the accused no. 2, the petitioners are officers in charge of the Trust. The petitioners shall have to lead their defence under Section 141 of the NI Act, in case



they are to escape their liability as the Trustees of the accused no.2-Trust, who is the drawer of the cheque(s) in question. Such defence is not to be considered by this Court or the learned Trial Court at this stage.

Conclusion:

25. In view of the above, I find no merits in the present petitions. The same are, accordingly, dismissed. There shall be no order as to costs.

26. It is hereby made clear that this Court has not expressed any opinion on the merits of the Complaint Cases and any observation made hereinabove shall not, in any manner, prejudice the petitioners in their defence in the Complaint cases.

27. The pending applications are also disposed of being rendered infructuous.

NAVIN CHAWLA, J

MAY 15, 2024/Arya/AS

Click here to check corrigendum, if any