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

\+ CRL.M.C. 5863/2024 and CRL.M.A. 22409/2024 (for stay)

MOHAMMAD MUMTAZ ANSARI AND ANR .....Petitioners

Through: Mr. Priyanshu Upadhyay with Mr. Viraat Tripathi, Mr. Abeer Shanditya and Mr. Ganesh Kr. Jha, Advocates.

versus

INDIAN OVERSEAS CORPORATION (P) LTD .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

<u>O R D E R</u>

% **01.08.2024**

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioners impugn order dated 23.09.2023 passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi in CC NI Act No. 96/2020.

2. By way of the impugned order the learned Magistrate has been pleased to dismiss an application filed by the petitioners (accused before the learned Magistrate) under section 45 of the Indian Evidence Act 1872 ('Evidence Act'), whereby the petitioners had prayed that the cheque that was subject matter of those proceedings be sent to a handwriting expert for forensic examination.

3. The issue sought to be raised by the petitioners is that though the subject cheque has been signed by petitioner No.1 as sole proprietor of petitioner No.2 firm, that cheque had been issued 'blank' to the respondent, who (latter) had subsequently filled-up the other details

including the date and the amount on the subject cheque; and that the petitioners did not owe any legally recoverable debt to the respondent.

4. Mr. Priyanshu Upadhyay, learned counsel appearing for the petitioners draws attention to Notice dated 20.11.2021 framed in the matter under section 251 of Cr.P.C., in response to which, petitioner No. 1 had admitted that the subject cheque bears his signature and his account number; but had contended that the other particulars appearing on the cheque have not been filled-in by him and that the cheque had been given to the respondent (complainant) towards 'security' against goods that the petitioners used to purchase from the respondent.

5. It is argued however, that during his cross-examination conducted on 13.12.2022, the accountant of the respondent company (CW-2) had said that the subject cheque had been given by the accused duly filled. Mr. Upadhyay submits, that arising from that statement of CW-2, the petitioners had moved the application under section 45 of the Evidence Act in order to elicit an expert opinion from an handwriting expert, which would prove that the ink and handwriting on the body of the cheque is different from the ink and handwriting appearing in the signature.

6. A perusal of the impugned order shows that the learned Magistrate has relied-upon a decision of a Co-ordinate Bench of this court in ***Ravi Chopra vs. State and Anr.***,[1] the relevant extract whereof reads as follows :

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[1] 2008 SCC OnLine Del 351

"20. A collective reading of the above said provision shows that even under the scheme of the NI Act it is possible for the drawer of the cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque the filled up at a subsequent point in time and presented for payment by the drawee. <u>There is no provision in the NI Act which either defines the difference in handwriting or the ink pertaining to the material particulars filled up in comparison with the signatures thereon as constituting a "material alteration" for the purposes of Section 87 NI Act</u>. What however, is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. <u>Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act</u>."

(emphasis supplied)

7. The learned Magistrate has also relied on the decision of the Supreme Court in ***Bir Singh vs. Mukesh Kumar***, [2] in which it has been held that on a meaningful reading of sections 20, 87 and 139 of the Negotiable Instruments Act 1881 ('N.I. Act'), it is immaterial that a cheque which has been duly signed and given to a party, was filled-in by a person other than the drawer; and that if a person signs a cheque over to a payee, then such person remains liable for the amount in the cheque unless he adduces evidence to rebut the presumption that the cheque has not been issued towards payment a legally recoverable debt or liability.

8. In the impugned order the learned Magistrate extracts the following relevant portions of *Bir Singh* (supra) :

[2] (2019) 4 SCC 197

"33. A meaningful reading of the provisions of Negotiable Instruments Act including, in particulars, 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 in duly signed by the drawer. If the cheque is otherwise is valid, the penal provision of Section 138 would be attracted.

"34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and the other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence."

(emphasis supplied)

9. Based on the foregoing precedents the learned Magistrate has concluded that since it is the admitted position that the subject cheque was signed by petitioner No.1 - which is what petitioner No. 1 has accepted in the notice framed under section 251 Cr.P.C. as well as in his statement recorded under section 313 Cr.P.C.; and the petitioners have not contended that the cheque was either signed or given under any threat or coercion; nor have the petitioners said that the cheque was stolen, it would not matter even if the other particulars on the subject cheque have been filled-in later by the respondent, since that would not constitute any 'material alternation' for purposes of section 87 of the N.I. Act.

10. It is in these circumstances, that the learned Magistrate holds that even if the report of a handwriting expert is called, and it shows that any particulars on the subject cheque have been filled-in by the respondent

in a different ink, that would not exonerate the petitioners of their liability under section 138 of the N.I. Act.

11. Needless to add that the petitioners have failed to prove that the amount comprised in the subject cheque did not comprise a legally recoverable debt payable by the petitioners to the respondent.

12. Upon considering the basis and reasoning of the impugned order, this court is unable to discern any flaw in that order, which would require correction in exercise its inherent powers under section 482 of the Cr.P.C.

13. Accordingly, the court finds no merit in the present petition.

14. The petition is accordingly dismissed *in-limine*.

15. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 1, 2024

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