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

% ***Date of Decision: 30th September, 2024***

+ **CRL.M.C. 5965/2019 & CRL.M.A. 40920/2019**

DEEPINDER SINGH BEDI & ANR.Petitioners

Through: Mr. Nikhil Pillai and
Ms. Malvi Dedhla, Advs.

versus

STATE & ANR.Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State
Mr. Neeraj Chaudhari,
Mr. Akshay Chandra,
Mr. Premnath Upadhyay,
Mr. Deeparghya Datta and
Mr. Vishal Tanwar, Advs.
for R-2.

+ **CRL.M.C. 5968/2019 & CRL.M.A. 40925/2019**

DEEPINDER SINGH BEDI & ANRPetitioners

Through: Mr. Nikhil Pillai and
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Mr. Deeparghya Datta and
Mr. Vishal Tanwar, Advs.
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

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Signing Date: 04.10.2024
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AMIT MAHAJAN, J.

1. The present petitions are filed challenging the order dated 05.09.2019 framing notice under Section 251 of the Code of Criminal Procedure, 1973 (**CrPC**) and summoning order dated 16.01.2015 passed by the learned Metropolitan Magistrate (**MM**), Patiala House Courts, Delhi in a complaint filed by Respondent No.2 being CC No. 29073/2016 titled *Vodafone Idea Ltd. V. Tulip Telecom Limited*, under Section 138 of the Negotiable Instruments Act, 1881(**NI Act**).

2. Briefly stated, the complaint in the present case was filed by Respondent No.2 against the petitioners in relation to an alleged dishonour of cheque dated 30.08.2013 on account of accused/drawer company's account being blocked due to a freezing order/notice dated 26.08.2013 issued by statutory authority – Office of Deputy Commissioner of Income Tax, Central Circle-II, New Delhi (**IT Department**).

3. The learned counsel for the petitioners submits that the impugned proceedings are not maintainable in view of the fact that the account of the drawer company was blocked/frozen by the order of IT Department prior to the presentation of cheques. He submits that in order to establish liability under section 138 of the NI Act, the cheque needs to be returned unpaid by the banker either because:

- a. The amount of money standing to the credit of that account is insufficient to honour the cheque; or



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- b. That the cheque exceeds the amount arranged to be paid from that account by an agreement between the account holder and the bank.
4. He submits that the cheque, in the present case was dishonoured for ostensible reasons which cannot be attributable to the drawer since, the cheque returned due the account being blocked by the IT department and was beyond the control of the drawer company.
5. The learned counsel for the petitioners relies upon the following judgments to buttress his arguments:
- a) ***Ceasefire Industries Ltd. v. State* : 2017 SCC OnLine Del 8280**
 - b) ***Onkar Nath Goenka v. Gujarat Lease Finance Ltd.* : 2008 SCC OnLine Del 1593**
 - c) ***Standard Chartered Bank v. State* : 2007 SCC OnLine Del 1105**
 - d) ***Chintan Arvind Kapadia v. State* : 2013 SCC OnLine Del 582**
 - e) ***Yogendra Pratap Singh v. Savitri Pandey* : (2014) 10 SCC 713**
 - f) ***Kusum Ingots & Alloys Ltd. Vs Pennar Peterson Securities Ltd. & Others* : (2000) 2 SCC 745**
 - g) ***Nagaraja Upadhya v. M. Sanjeevan* : 2007 SCC OnLine Kar 214**
 - h) ***National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* : (2010) 3 SCC 330**



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6. *Per Contra*, the learned counsel for Respondent No.2 has vehemently opposed the present petition on the ground that the disputed facts are matter of trial and cannot be adjudicated in a petition invoking the jurisdiction of the High Court under Section 482 of the CrPC. He relies upon the following judgments in support of his contention:

- a) *Om Kumar Dhankar v. State of Haryana* : (2012) 11 SCC 252
- b) *Vikram Singh v. Shyoji Ram* : 2022 SCC OnLine SC 940
- c) *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* : (2005) 8 SCC 89
- d) *S.P. Chengalvaraya Naidu v. Jagannath* : (1994) 1 SCC 1
- e) *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corpn. of India Ltd.* : (2023) 10 SCC 545

Analysis

7. The short question that falls for consideration for this Court is whether the petitioners can be held liable under Section 138 of the NI Act on the dishonour of cheque due to the account being frozen/blocked by the order of IT department.

8. The case of the petitioners/drawer company before this Court is that the payment could not have been made, in view of the fact that IT department had blocked the account of the drawer company. This fact is also corroborated from the following:

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8.1 Return memo of the Bank which shows the endorsement “account blocked”;

8.2 Deposition of Bank of India’s official as CW-I – Roshan Kumar recorded on 21.05.2014 and 16.01.2015, wherein he stated that “*cheque in question is dishonoured on 28.09.2013 due to reason account blocked*”;

8.3 IT Department’s attachment order whereby the bank account of the drawer company was freezed/blocked;

8.4 Bank of India’s letter dated 15.11.2014 stating that the bank account of the drawer company has been frozen by the attachment order of the IT department.

9. Section 138 of the NI Act makes it clear that it is not every return of a cheque unpaid which leads to prosecution for an offence under the Act. For the said purposes, the cheque must have been returned “unpaid” by the banker either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that the cheque exceeds the amount arranged to be paid from that account by an agreement between the account holder and the bank. [Ref : ***Standard Chartered Bank v. State (supra)***].

10. The complaint, in the present case, does not state that the cheque was dishonoured on account of either of the two grounds on which liability under Section 138 of the NI Act can be made out.

11. The NI Act is a special law which was enacted for the purpose of speedy adjudication of the cases in relations to



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dishonour of the cheque. The purpose of the same was to instil the confidence of the public in the banking system. The provisions are attracted when a person draws a cheque from an account maintained by him in a bank for payment of certain amount for the discharge of any debt or liability.

12. In, ***Kusum Ingots & Alloys Ltd. Vs Pennar Peterson Securities Ltd. & Others*** (*supra*), the Hon'ble Apex Court has unequivocally opined that in cases where the dishonour of a cheque occurs due to reasons beyond the control of the company's directors, it would be unjust, unfair, and contrary to the Legislature's intent to subject the directors to a criminal trial. The Hon'ble Apex Court further emphasized the essential elements that must be satisfied to establish a case under Section 138 of the NI Act. The relevant portion is as follows:

“10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that 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;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the 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 the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the



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cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice."

13. Thus, a person commits an offence under Section 138 of the NI Act when he draws a cheque from an account maintained by him in a bank for discharge of any debt or any liability and the cheque is returned unpaid for the reason of the insufficient credit in the account. It is an admitted case as stated in the complaint filed by the complainant before the learned MM that the cheque was dishonoured for the reason that the account was blocked by the order of IT department.

14. The attachment of the bank account of the drawer company had the effect of disabling the petitioners from operating or maintaining the said account. The petitioners could not exercise his right either to make a deposit or withdraw any money from the said account.

15. The attachment of the bank account of the drawer company cannot be said to be a voluntary act and it also cannot be said that the petitioners got the bank account purposely attached only for the purpose of warding off the penal consequences under Section 138 of the NI Act.

16. As stated above, a person commits an offence under Section 138 of the NI Act when he draws a cheque on an account maintained by him for discharge of any debt or liability and the



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said cheque is returned unpaid for the reason of insufficient funds. In the present case, the account of the drawer company was blocked / frozen by the order of the IT department thus, the said account at the time of dishonour of cheque cannot be held to be maintained in the bank. Drawing a cheque for discharge of any debt or liability from an account which is not maintained by a person for the reason of it being frozen may amount to an offence under other statutes but cannot be termed as an offence under Section 138 of the NI Act. A Coordinate Bench of this Court, in similar circumstance, in the case of **Vijay Chaudhary v.**

Gyan Chand Jain : 2008 SCC OnLine Del 554 held as under:

“....It also cannot be said that after the attachment of the bank account, the same was being maintained by the petitioner. For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issue any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the court orders continued.”

17. Thus, for an account to be called as maintained by the drawer, it is essential that the he is in a position to operate the said bank account by either depositing the money or withdrawing the money therefrom. The account holder should be in a position to give effective instructions to his banker with whom the account is being maintained.



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18. In the present case, once the bank account has been attached by an order of the IT department, the same could not have been operated by the petitioners or be called to have been maintained by him.

19. In view of the above, the present petition is allowed and the complaint being CC No. 29073/2016 filed by the respondent before the learned Metropolitan Magistrate for offence under Section 138 of the NI Act along with the consequential proceedings arising therefrom, is quashed.

20. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 30, 2024