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

+ CRL.M.C. 8797/2023 and CRL.M.A. 32794/2023 (stay)

AKASH CREATION PRIVATE LTD. & ORS. Petitioners

Through: Mr. Maneesh Kumar, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

02.04.2024

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1. By way of present petition filed under Section 482 Cr.P.C., the petitioners seek quashing of complaint case being CC No.9582/2019 filed under Section 138 of the Negotiable Instruments Act ('NI Act') and pending before learned MM-04, District East, Karkardooma as well as the summoning order dated 22.11.2019.

2. On 01.12.2023, notice in the present petition was issued and submission of learned counsel for the petition to the effect that there was possibility of settling the matter was also noted. Apparently, despite two dates, the petitioners have not filed the process fee. Accordingly, this Court has proceeded to consider the petition on merits.

3. The facts in brief are that in the complaint, respondent No.2/complainant has alleged that it had provided certain services to the petitioners/accused persons in proceedings relating to their income tax



matters. Consequently, respondent No.2 raised invoice for Rs.4,05,500/- in response to which, 5 cheques of Rs.50,000/- each (totaling to Rs.2,50,000/-) were received towards part-payment of professional charges and expenses. The said cheques, when presented for encashment were dishonoured with the remarks '*insufficient funds*' vide respective return memos. Out of the said cheques, three cheques were again presented for encashment on 13.09.2019, when they were again dishonoured with the remarks '*Insufficient Funds*'. The other two cheques were not presented again as their validity had already expired. Respondent No.2 issued demand notice dated 09.10.2019, but the notice was undelivered. It was further claimed that notices were sent through WhatsApp as well as email. On the strength of the aforesaid allegations, the petitioners/accused persons were summoned vide order dated 22.11.2019 summoning order was issued.

4. The petitioners contend that the statutory notice was never received by them as the same was returned with the remarks '*no such person on the address & left*' and thus, there was no valid service upon the petitioners. It is further contended that even otherwise in the demand notice, no specific amount has been mentioned.

5. Though the petitioners have contended that they had not received the legal notice, a reading of the complaint would show that after being served with the legal notice through WhatsApp and email, petitioner No.3 being the Director of the accused company, transferred a sum of Rs.25,000/- through internet banking in the bank account of the complainant. The complainant also received a WhatsApp message regarding the above said payment on 29.10.2019. In view of the same, on a prima facie look, the petitioners had received the legal notice. Even otherwise in Ajeet Seeds Limited v. K.



Gopala Krishnaiah reported as **(2014) 12 SCC 685**, it has been held that the aspect of whether the petitioners were served with a statutory notice, is a matter of trial.

The second contention raised that the legal notice is silent on the exact amount, the same is found to be meritless as in the statutory notice, the complainant had given complete details of the cheques dishonoured as well as their amounts. In the said legal notice, respondent No.2 has categorically demanded that the amounts under the said cheques be paid.

6. In view of the above, the contentions raised by the petitioners are found to be meritless. Accordingly, the petition is dismissed alongwith the pending application.

7. Needless to add that nothing stated herein shall influence the trial in any manner.

MANOJ KUMAR OHRI, J

APRIL 2, 2024

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