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

+ **CRL.M.C. 7066/2024 & CRL.M.A. 26985/2024**

SH. ALOK GUPTA

.....Petitioner

Through: Mr. Kundan Roy, Mr. Pulkit Atal and
Mr. Manoj Kumar, Advocates.

versus

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

Through: Ms. Shubhi Gupta, APP for the State.
Mr. Kapil Gupta, Advocate for R2&3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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06.09.2024

CRL.M.A. 26986/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 7066/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks quashing of criminal complaint bearing No. 5582/2022 filed by the respondent under section 138 of the Negotiable Instrument Act, 1881 ('N.I. Act') along with all proceedings arising therefrom.



2. Learned counsel appearing for the petitioner submits, that a bare reading of the criminal complaint would show that the transactions in relation to which the subject cheque for Rs. 1.4 crores was sought to be encashed, arose from a Loan Agreement dated 03.09.2020 which was signed by the parties *after* the transactions in question had already occurred.
3. Counsel submits, that the petitioner had given to the respondent a 'blank' signed cheque towards monies advanced by the respondent to the petitioner, out of which only a sum of Rs. 45 lacs remained due; but in an act of dishonesty, the respondent filled-up the blank cheque for the entire sum of Rs. 1.4 crores, which is the basis of the criminal complaint.
4. Counsel submits, that Rs. 1.4 crores was neither due nor payable on the date the cheque was presented; and therefore does not comprise a legally enforceable debt; and accordingly, the criminal complaint is not maintainable.
5. On a perusal of a criminal complaint however, it transpires that the details of the transactions between the parties, which led to the issuance of the subject cheque would require evidence to be lead on both sides. Besides, as pointed-out by the learned counsel appearing for the respondent on advance copy, in his reply to an application under section 143(A) of the N.I. Act, the petitioner has taken the stand that he has '*paid the entire actual amount in question i.e. Rs. 1,40,00,000/- on multiple instances through cash*', which appears to contradict the position taken by the petitioner in the present proceedings.



6. In the circumstances, in view of the decision of the Supreme Court in ***Bir Singh vs. Mukesh Kumar***¹, this court is unable to discern any ground for entertaining the present petition, since the question of whether or not there was a 'legally recoverable debt' would be a matter of defence, which the petitioner will have to prove in the course of the trial.
7. The present petition is accordingly dismissed *in-limine*, without issuing notice.
8. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 6, 2024

V.Rawat

¹ (2019) 4 SCC 197