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

% *Date of decision: 13th September, 2024*

+ **W.P.(CRL) 2836/2024 & CRL.M.A. 27642/2024 (stay)**

RAMAN RAHEJAPetitioner

Through: Mr. Vidit Garg, Advocate.

versus

STATE OF NCT OF DELHI AND ORS & ANR.Respondents

Through: Mr. Anand V Khatri, ASC, Crl. for State.

Mr. Dhruv Suri, Ms. Urvika Suri & Mr. Prakhar
Srivastava, Advocates for R-2.

S.I. Dharam Singh, PS Hauz Khas, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

CRL.M.A. 27643/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(CRL) 2836/2024

3. The present Petition under Articles 226 and 227 of the Constitution of India read with Section 528 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* ('BNSS' *hereinafter*) has been filed on behalf of the petitioner seeking to set aside *Impugned Order dated 03.07.2024* in Criminal Revision Petition No. 492/2023 dismissing his challenge to the Summoning Order dated 19.11.2019.

4. ***Briefly stated***, the accused/revisionist executed a *Travel Service*



Agreement with the respondent/complainant, to provide certain travel related services. In terms of the Agreement, the complainant raised 128 Invoices amounting to Rs. 26,63,936.40 against which a payment of Rs.13,42,447.98/- was made leaving a balance of Rs. 13,20,488.42/- as outstanding and due to the complainant.

5. On the exchange of e-mails, the revisionist admitted the outstanding liability and issued two post-dated cheques amounting to Rs.10,00,000/-. The cheques on presentation, however, were dishonoured for “*Funds Insufficient*”. Despite service of Legal Notice, the amount was not paid by the accused/revisionist leading to filing of C.C. No. 36841/2019 under Section 138 of the Negotiable Instruments Act, 1881 (‘N.I. Act’) against him. The learned Metropolitan Magistrate took cognizance and summoned the Petitioner *vide* Order dated 19.11.2019.

6. This Order was challenged by the revisionist, before the learned ASJ by way of a Revision on the ground that the parties had arrived at a *Compromise Deed/Settlement Agreement dated 05.11.2020* subsequent to initiation of the proceedings before the National Company Law Tribunal., in the light of which the Complaint under Section 138 of the N.I. Act, is liable to be dismissed. He sought the quashing of the Complaint, summons and subsequent criminal proceedings in under Section 138 Negotiable Instruments Act pending before the learned Metropolitan Magistrate, Delhi

7. For this reliance has been placed on ‘*M/s Gimpex Private Limited v. Manoj’ Goel*, CrI. Appeal No. 1068/2021, wherein it was held that once the parties enter into a settlement, the original Complaint cannot be sustained.

Reliance has also placed *Vinod Bansal v. Intec Capital Ltd.*, MANU/DE/3254/2024 and *M/s Tulsiani Constructions and Developers Ltd.*



& Ors. v. State of NCT of Delhi and Ors., MANU/DE/4287/2023 and Mahdoo Bawa Bahrudeen Noorul vs. Kaveri Plastics, 2024:DHC:1463.

8. The second ground agitated on behalf of the revisionist is that there was an error committed since the accused/revisionist was not a proper party. He was suspended from the Company and he has no liability to pay against the cheques in question.

9. **Issue notice.**

10. Mr. Anand V. Khatri, learned Additional Standing Counsel appearing on advance notice, accepts notice on behalf of the State.

11. The *respondent Company has contested the claim of the petitioner* on the ground that being a Director; the revisionist is responsible for payment against the dishonoured cheque. The issue of him being the Director and was fully aware about the day-to-day affairs of the Company and the issuance of cheque, was well within his knowledge.

12. *Learned counsel on behalf of the respondent No. 2* has vehemently opposed the present Petition and has submitted that the Order of Summoning was made on 19.11.2019 ('Summoning Order' *hereinafter*) in the Complaint as the Complaint *prima facie* disclosed the commission of the offence under Section 138 of the N.I. Act. This Order of Summoning was challenged for the first time, only after more than four years, before the learned ASJ. The *grounds* on which setting aside of the *Summoning Order* is sought, are the defences of the revisionist, which cannot be considered at the stage of summoning.

13. The Ld. ASJ vide the impugned Order dated 03.07.2024 has rightly dismissed the Revision preferred against the summoning order.



14. **Submissions heard.**

15. The main defence taken by the revisionist is that he was the suspended Director of the Company and had no liability towards the dishonoured cheque. However, in the case of S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan, CrI. Appeal No. 1586/2022, the Apex Court had observed that if any Director wants the process to be quashed against him by filing a Petition under Section 482 of the Code of Criminal Procedure, (*hereinafter referred to as 'CrPC, 1973'*) on the ground that there is only a bald averment in the Complaint about his involvement in the affairs of the Company and that he was not in really concerned with the issuance of the cheque, then he must furnish some sterling, incontrovertible material or acceptable circumstances to substantiate his/her contention. He must make out a case that making him face the trial would be an abuse of the process of the Court.

16. Likewise, in the case of C.K. Kannan v Sri Srinivasa Cotton Corporation and Ors., 2022 SCC OnLine AP 1192, it was observed that where it is not denied that the accused was the Director at the time of issuance of the cheque, then he cannot be heard to say that he is not liable for the offence under Section 138 of the N.I Act. The question as to whether the resignation was tendered and when it was accepted and when was the accepted resignation communicated to the Register of Companies, are all matters of trial, which have to be looked into and decided on the basis of evidence and such assertions cannot be a basis for quashing of the summoning order.

17. In the present case as well, the revisionist is seeking quashing on the ground that at the relevant time, he had been suspended from the Company



but it is a matter of fact, which has to be proved only by adducing cogent evidence during the Trial. The learned Sessions Judge had rightly observed that such contention cannot be considered for quashing of the summoning order.

18. The *second ground* which has been contended by the revisionist is that their parties had arrived at an Agreement/Settlement dated 05.11.2020 and therefore, the legal remedy available to the Respondent/Complainant is only under the *Settlement Deed* itself.

19. However, the revisionist/accused himself has stated in the Revision Petition as noted in the *Order of Ld. ASJ dated 03.07.2024*, of signatures on the Settlement Agreement being disputed. The copy of the cross-examination of the Complainant conducted on 02.06.2023, by the revisionist, has been placed on record, wherein the complainant has categorically stated that the signatures on the *Settlement Agreement*, are forged. While it is admitted that the *Settlement Agreement dated 05.11.2020* was executed between the parties, but according to the complainant, the copy produced in the Court, was not the same. Whether the Agreement mentions any Clause which is binding upon the parties for dishonour of the cheque, is a matter of trial. The validity of the Settlement Agreement itself is a mixed question of facts and law, which is to be tested on the touchstone of the cross-examination.

20. In *M.S. Narayana Menon v. State of Kerala*, (2006) 6 SCC 39, Supreme Court had emphasized that at the stage of summoning, the Magistrate is not required to meticulously evaluate the evidence but only has to satisfy itself on the *prima facie* case against the accused.

The learned ASJ has, therefore, rightly observed that the two grounds on



which the summoning Order has been challenged, is required to be established by way of evidence.

21. *Before concluding*, it is pertinent to observe that the *Summoning Order dated 19.11.2019* was challenged for the first time in the Revision Petition, on 18.12.2023 i.e. after about four years. The record also shows that the cross-examination of the complainant stands concluded and the matter is fixed for the evidence of the revisionist/accused.

22. In light of the aforesaid discussion, it is hereby held that there is no merit to the challenge of the summoning Order dated 19.11.2019. There is no merit in the present Petition, which is hereby dismissed.

23. The pending Application also stands disposed of.

(NEENA BANSAL KRISHNA)

JUDGE

SEPTEMBER 13, 2024/RS