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

+ **CRL.M.C. 7668/2024**

MR SANJEEV KUMAR GUPTAPetitioner
Through: **Mr. Vivek Jain, Mr. Amit Trivedi, Ms. Aastha Tiwari, Ms. Tulasi Mukhi & Mr. Sunny Verma, Advocates.**

versus

THE STATE GOVT OF NCT OF DELHI & ANR.Respondents
Through: **Mr. Rajkumar, APP for the State**

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
26.09.2024

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CRL.M.A. 29240/2024 (exemption)

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

CRL.M.C. 7668/2024 & CRL.M.A. 29241/2024 (stay)

3. The present petition is filed challenging the order dated 10.08.2023 and 21.02.2024, whereby summons were issued to the petitioner in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881.
4. The learned counsel for the petitioner submits that the summoning order is bereft of any details in regard to the offence alleged against the petitioner.
5. She submits that the details of the cheques and amount received is not mentioned in the summoning order. She submits that the summoning order is passed in a mechanical manner.



6. She submits that the learned Trial Court has failed to appreciate that the petitioner had already made part-payment of the amount due.

7. She further submits that the ledger account, which was attached with the complaint, is of an earlier period and does not reflect the correct status of the payments received by the complainant. She relies upon the judgment passed by the Hon'ble Apex Court in ***Pepsi Foods Ltd. And Anr. Vs. Special Judicial Magistrate And Ors.: 1998 (5) SCC 749.***

8. It is not disputed that the summoning of the accused in a criminal case is a serious matter. Perusal of the summoning order clearly indicates that the learned Trial Court has gone through the contents of the complaint and the documents relied upon by the complainant. It is also noted that the same was filed within the period of limitation. The learned Trial Court after perusal of the record noted that there is sufficient material before the Court to proceed against the petitioner.

9. The arguments raised by the learned counsel for the petitioner are in the nature of defence for which the petitioner would get an opportunity to lead evidence at the time of trial.

10. It is a settled law that at the time of summoning of an accused in a complaint, the averments in the complaint are taken on a demurrer to see whether a *prima facie* case exists against the accused persons.

11. The High Court while exercising power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 can interfere with the summoning order at the initial stage only when uncontroverted material of such unimpeachable nature is produced which would make the continuance of the proceedings an abuse of the process of law.



12. At this stage, no such uncontroverted material is placed on record which shows that no case is made out against the petitioners. A ledger statement has been filed along with the petition, however, the veracity of the same would be tested during the course of trial and cannot be looked into at this stage when merely the summons have been issued.

13. The petitioner is at liberty to take all arguments at the time of trial.

14. The petition alongwith pending application is dismissed with the aforesaid observations.

AMIT MAHAJAN, J

SEPTEMBER 26, 2024

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