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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 9108/2024 & CRL.M.A. 34912/2024 & CRL.M.A.
34911/2024
MD. SAWOODPetitioner

Through: Ms. Sangeeta Singh, Ms. Kavya G
and Ms. Shreya Sinha, Advocates

versus

AMU LEASING PVT. LTD.Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

% **ORDER**
21.11.2024

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier under Section 482 of the Code of Criminal Procedure, 1973) has been filed on behalf of the petitioner seeking the following reliefs:

“a) Quash/set aside of the Criminal Complaint Filed Under Section 202A issued 138 of NI Act and summon dated 04.05.2024 against the petitioner by the court of learned chief metropolitan magistrate in cc no. 22910/2023, south west district, Dwaraka district court.

b) Pass other order or orders as may be deemed fit and proper in the interest of justice.”

2. Learned counsel appearing on behalf of the petitioner submitted that



the petitioner herein is an innocent person and has been falsely implicated in the instant case.

3. It is submitted that the Court concerned has erroneously issued summons against the petitioner vide order dated 6th May, 2024 (hereinafter as the “summoning order”) without considering the case of the petitioner. It is further submitted that the petitioner’s reply to the demand notice dated 7th June, 2023 was not taken into account by the Court concerned. The said demand notice dated 7th June, 2023 is appended as Annexure P-5 to the instant petition.

4. It is submitted that the respondent has falsely filed the complaint bearing no. 22910/2023 dated 27th July, 2023 alleging that the petitioner has issued a cheque bearing no. 100979 dated 5th April, 2023 for an amount of Rs. 14,84,584/- to the respondent/complainant which is drawn on Punjab National Bank, Civil Lines Branch, Allahabad, Uttar Pradesh and upon presentation of the same, the said cheque was dishonoured. However, it is submitted that the said cheque was never issued to the respondent by the petitioner.

5. It is submitted that the petitioner has filed an RTI application to the concerned Bank regarding the cheque in dispute and in reply to the same, it was mentioned that the said cheque has not been issued from the petitioner’s bank account. For strengthening her argument, learned counsel for the petitioner referred to the concerned Bank’s reply to the RTI application which is annexed as Annexure P-9 to the instant petition.

6. Therefore, it is submitted that the Court concerned erred in passing the summoning order as there is no case made out against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter as



the “NI Act”) in view of the concerned Bank’s reply to the RTI application.

7. In view of the foregoing submissions, it is prayed that the aforesaid complaint and the summoning order be set aside and the instant petition be allowed.

8. None appeared on behalf of the respondent.

9. Heard learned counsel for the petitioner and perused the record.

10. It is the case of the petitioner that the complaint dated 27th July, 2023 and the summoning order passed by the learned ASJ are liable to be set aside as the cheque in question was not issued by the petitioner as per the material placed on record, especially the concerned Bank’s reply to the RTI application.

11. At this stage, it is apposite to mention that while issuing summons for an offence punishable under Section 138 of the Act, the Magistrate is required to be *prima facie* satisfied that a case is made out against the accused based on the contents of the complaint, material on record as well as the evidence on affidavit. This principle has been observed in catena of judgments, including the case of **A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790**. The relevant paragraph of the case are as follows –

“29. From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a



*matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act. **It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act.***”

12. Accordingly, this Court has perused the complaint dated 27th July, 2023 as well as the demand notice dated 7th June, 2023. It is specifically averred in Paragraph nos. 11, 12 and 13 of the complaint, that a cheque bearing no. 100979 for an amount of Rs. 14,84,584/-, drawn on Punjab National Bank, Civil Lines Branch, Allahabad, Uttar Pradesh was presented for encashment, however, the same was dishonoured and returned as “Advice not Received” vide memo dated 7th April, 2023. It was mentioned in the said demand notice that the said cheque was again presented for encashment and it was dishonoured and returned as “Advice not Received” vide memo dated 26th May, 2023.

13. It is further observed that the said demand notice dated 7th June, 2023 was issued to the petitioner within the statutory time period of 30 days from the date of receipt of information i.e., 25th May, 2023, thereby meeting the criteria laid down under Section 138 of the NI Act. However, it is observed



that the reply to the said demand notice was not filed by the petitioner.

14. As mentioned earlier, it is a settled law that at the stage of issuance of summons, the Court concerned has to peruse and consider the averments made in the complaint and the documents filed along with the complaint. If the concerned Court is *prima facie* satisfied that there is sufficient material available for the purpose of issuing summons, the Court may issue the same against the accused.

15. In the instant case, the averments made in the said complaint as well as the demand notice indicate that a *prima facie* case exist against the petitioner, wherein it specifically mentioned that the said cheque was dishonoured when presented in the concerned Bank. The return memo dated 25th May, 2023 has also been attached to the said complaint and therefore, sufficient material is available for the Court concerned to take cognizance of the case and issue summons against the petitioner.

16. At this juncture, it is also pertinent to peruse the material relied upon by the learned counsel for the petitioner, especially the concerned Bank's reply to the RTI application. The documents which have been relied by the petitioner for the purpose of quashing of the said complaint and summoning order is a subject matter of the trial and this Court may not exercise its powers under Section 528 of the BNSS by taking a conclusive view on the veracity of the document as well as the allegations levelled against the petitioner.

17. Therefore, taking into consideration the facts of the case as well as the settled position of law, this Court does not find any reason to interfere in the summoning order or for quashing of the complaint dated 27th July, 2023 and therefore, this Court does not find any reason to exercise its powers under



Section 482 of the Code (Section 528 of the BNSS) as the instant petition is bereft of any merit.

18. Accordingly, the instant petition is dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 21, 2024
gs/mk

[Click here to check corrigendum, if any](#)