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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.39 OF 2023

VALUE LINE INTERIORS
PVT. LTD. AND ANR. ... Petitioners.

Versus

TRIUMPH REALTY PVT. LTD.,
REP. BY ITS AUT. SIGN.,
BASAB CHAKARBORTY ... Respondent.

Mr. Jatin Ramaiya with Mr. Omkar Parab, Advocates for the Petitioners.

Mr. Parag Rao with Mr Shulin Singbal, Advocates for the Respondent.

CORAM: VALMIKI MENEZES, J.
DATED: 24th June, 2025

P.C:

1. The petition takes exception to an order dated 21.04.2021 passed by the Sessions Court in Criminal Revision Application No.6/2021, in which the Petitioners had challenged an order dated 24.06.2020 passed by the J.M.F.C. in Criminal Case No. OA/431/2018/C by which it has issued process on the complaint filed under Section 138 of the N.I. Act. The Respondent is the original Complainant who has alleged in the complaint that the three cheques issued by the Petitioners were for consideration and were banked, according to the complaint, in an account at Goa, based on which the Magistrate at Margao had territorial jurisdiction to entertain the complaint. Process was issued by the learned Magistrate after examining the complaint and the documents annexed to the complaint.

2. The order of issuance of process was challenged in a Criminal Revision Application before the Sessions Court which has rejected the Revision, upholding the order of issuance of process. The Accused/Petitioner is before this Court against rejection in revisional jurisdiction.

3. The learned Advocate for the Petitioners has advanced the following submissions:

a) That the Magistrate ought to have considered not only the averments made in the complaint with regard to territorial jurisdiction of the Court, but ought to have perused the documents which were produced, which suggests that the cheque was actually banked and cleared at the Delhi branch of the Complainant's bank. On the basis of the deposit slip alone, it is the contention of the Petitioners, that the Court ought to have rejected the complaint for want of territorial jurisdiction and directed the Complainant to present the complaint before the Court with appropriate jurisdiction.

b) The second submission advanced was that the memo of return of the cheque did not state that the cheque was dishonoured for insufficient funds but states that the cheque was returned since the KYC of the Petitioners/payees' account and formalities were not completed. It was submitted that when an account does not have a valid KYC, the Magistrate could not have, at the stage of issuance of process, concluded that the cheque had been dishonoured for reasons that the account had insufficient funds to cover the cheque. Reliance has been placed on the following Judgments :

i. ***NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd.,* (1999) 4 SCC 253.**

ii. ***Laxmi Dyechem v. State of Gujarat and Ors.,* (2012) 13 SCC 375.**

iii. ***Asmita Sarang v. Yogesh Badoni and Anr.,* 2023 SCC OnLine Bom 528.**

iv. ***Deepinder Singh Bedi and Anr., v. State and Anr.,* (2024) 314 DLT 632.**

4. I have considered the record of the complaint and the documents annexed thereto and the affidavit in verification of the complaint under Section 200 Cr.P.C. The narrow issue, is whether at the state of issuance of process, the Magistrate is required to scan every document and every piece of evidence or is merely to arrive at a prima facie satisfaction that the complaint and the documents annexed thereto, suggests that an offence under Section 138 of the

N.I. Act has been committed. The Magistrate, at this stage, is not required to give verbose reasons for issuance of process but has merely to record his satisfaction.

5. The Revisional Court has considered the entire conspectus of the matter on the touchstone of this principle. The Revisional Court, in a detailed Judgment has concluded, after considering the complaint and the documents on record, that there is a prima facie case and that process had been properly issued.

6. The matter is now before a Writ Court seeking invocation of supervisory jurisdiction of the Court under Article 227 of the Constitution of India. At the stage of issuance of process, the supervisory jurisdiction is to be exercised very sparingly and in cases where there is glaring illegality or a decision is blatantly perverse. In the present case, the Sessions Court has considered the order of issuance of process on the correct parameters of law, i.e. to say, the prima facie consideration that is required to be exercised by the Magistrate whilst issuing process under Section 202 Cr.P.C.

7. In ***NEPC Micon*** (supra), the Supreme Court has held that even where a cheque is dishonoured for reason that the account was closed, it would amount to dishonour due to insufficient funds and attract the provisions of Section 138.

8. In ***Laxmi Dyechem*** (supra), the Supreme Court considered various situations where a cheque is dishonoured, and the reasons for dishonour would amount to dishonouring the cheque under Section 138. The relevant portions of the judgment are quoted below:

> "*16.1. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance, this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied.*
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> *16.2. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the*

> *course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration.*"

9. In ***Asmita Sarang*** (supra), the Supreme Court has held that even where the operation of a bank account was frozen, or where drawer's signature differs, it would attract the provisions of Section 138 N.I. Act where a cheque was dishonoured for this reason. Thus, a cheque could be dishonoured for multiple reasons which would attract the provisions of Section 138 and process can be issued to the accused for any of these. The question of whether there were, in fact, sufficient funds to cover the cheque would be a matter of trial.

10. The Judgment of the Delhi High Court in ***Deepinder Singh Bedi*** (supra) cited by the Petitioner will not apply to the facts of the present case. In that case, there was no averment in the complaint that the cheque was dishonoured for insufficient funds but it was the case of the complainant that the cheque was dishonoured since the account was closed. In any event, as held by the Supreme Court in ***Asmita Sarang*** (supra), even such a reason would not, at the stage of issuance of process, absolve the accused.

11. In any event, the question as to whether dishonour of the cheque in question was in fact due to a lack of KYC documentation or due to the allegation made in the complaint of having bounced due to insufficient funds, is a matter for trial. These are not matters that have to be dealt into by the Magistrate at the stage of issuance of process. Deciding this point at this stage would be purely academic and is uncalled for.

12. In view of the reasons given above, this case does not call for interference with the revisional order or the original order of issuance of process, in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

13. The petition is rejected. No costs.

VALMIKI MENEZES, J.