IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.585 of 2025 and
Crl.M.P.No.226 of 2025

Aishwarya Raj ...Petitioner

Vs.

M/s.SPI Diners Private Limited,
Rep. by its Authorized Representative/Director,
Taluri Kishore,
having its registered office at:
1st Floor, 3, 2nd Street, Subbarao Avenue,
College Road, Chennai – 600 006. ...Respondent

Prayer : Criminal Original Petition filed under Section 528 BNSS to call for the records pertaining to the complaint in S.T.C.No.4652 of 2024, pending trial on the file of the Fast Track Court V at Magistrate Level for Trial of Cases under NI Act, Saidapet, for alleged offence under Section 138 of NI Act, and quash the same.

For Petitioner : Mr.C.Manishankar, Senior Counsel
for M/s.Rahul M.Shankar
For Respondent : Mr.B.Aravind Srevatsa

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ORDER

This petition has been filed seeking to quash the case in S.T.C.No.4652 of 2024 pending on the file of the Fast Track Court V at Magistrate Level for Trial of Cases under NI Act, Saidapet.

2 Learned Senior Counsel for the petitioner/accused would submit that there was an agreement between the petitioner and the respondent/complainant to buy the shares of the petitioner/accused for Rs.7.00 Crores and the respondent/complainant defaulted in payment and did not pay the entire amount. In or around the November 2022, the petitioner noticed that fews of her cheques, which were kept in the office locker had mysteriously disappeared, for which she lodged compliant and CSR No.520 of 2022 has also been issued. The petitioner also issued 'stop payment' letter to the Bank on 05.12.2022 itself for the cheques, which were reported lost. One of the cheques had been misused by the respondent/complainant, which was presented on 22.03.2023, whereas, the petitioner lodged complaint, much earlier on 05.12.2022 and sent stop payment letter to the Bank also. Even in the reply notice the petitioner has narrated all the incidents. Therefore it is a clear case of misuse of the cheque and false case has been lodged by the respondent/complainant, which is liable to be quashed as per the decisions of the *Hon'ble Supreme Court* reported in *(2009) 6 SCC 72* in the case of *Raj Kumar Khurana vs. Stat of (NCT of Delhi) and Another.* Further it is a civil dispute and there is arbitration clause in the agreement and hence if there is any dispute, the respondent/complainant has to invoke the said arbitration clause. Therefore the present complaint against the petitioner is not sustainable in law and the same is liable to be quashed at the threshold.

3 Learned counsel for the respondent/complainant would submit that there is legally enforceable debt. The petitioner agreed to sale her shares for Rs.7.00 Crores and the respondent/complainant paid Rs.6.50 Crores as per the agreement. But, the petitioner/accused did not act upon the terms of the agreement and hence the respondent/complainant demanded the money back and the petitioner also accepted the same and issued the subject cheque. The petitioner/accused made frivolous reply to the statutory notice sent by the respondent/complainant in order to evade payment. The subject cheque has been issued only towards the discharge of legally enforceable debt and the complaint need not be quashed at this stage. Therefore enquiry by the learned Magistrate would only reveal the truth and hence the complaint need not be quashed.

4 Heard the learned Senior Counsel appearing for the petitioner/accused and the learned counsel for the respondent and perused the materials available on record.

5 The transaction between the parties is admitted. Even though the learned Senior Counsel contended that the petitioner made complaint before the police for missing of the cheques and also sent letter to Bank for stop payment, the petitioner has not specifically denied the signature found on the cheque. Even in the reply notice there is no specific denial of the signature, especially, when transaction between the petitioner and the respondent is admitted. Once transaction is admitted and there is no specific denial of signature found in the disputed cheque, presumption would come into play that the cheque has been issued towards discharge of legally enforceable debt and it is for the petitioner/accused to rebut the said presumption in the manner known to law.

6 In the present case on hand, the petitioner/accused admitted the receipt of amount of Rs.6.5 Crores paid by the respondent/complainant and the petitioner has not stated anything about the same. Therefore enquiry under Section 138 of NI Act by the Court below would only reveal the fate of the amount paid by the complainant.

7 Furthermore, a complaint under Section 138 of NI Act cannot be automatically quashed simply because a cheque was reported lost or stolen. Reporting a cheque as lost or stolen can be a defense, but it is not a guaranteed reason to dismiss the complaint. The court below will consider evidence related to the loss or theft of the cheque during the trial.

8 In the present case on hand, the respondent/

complainant, before presenting the cheque for collection, intimated the same to the petitioner/accused vide letter dated 20.03.2023, but there was no proof from the petitioner/accused to show that she responded for the same. Further, from the statutory notice issued by the respondent/complainant and the reply sent by the petitioner/accused, it could be seen that there is no denial of the signature found in the cheque and the cheque was not dishonoured for the reason of 'stop payment issued' but, the cheque has been dishonoured for “insufficient funds” by the Bank and the petitioner/accused in her reply notice has not stated anything about the same. Even though, subsequently the Bank sent communication to change the reason as 'stop payment issued', the above fact creates doubt in the case of the petitioner/accused. Therefore the loss of cheque could be ascertained only during trial, where the petitioner has an opportunity of cross-examining the Bank Officials to establish that they are having an obligation to refuse honouring the cheque on the ground that the cheque has been reported ‘lost’ by the drawer.

9 Under such circumstances, if the complaint is quashed, it would amount to denial of justice to the respondent/complainant. Further the petitioner/accused can very well establish all her defence before the Court below during the enquiry, by which, the complaint would come to its logical end. The decision relied on by the learned Senior Counsel would not apply to the facts of the present case on hand. Hence this Court is not inclined to quash the complaint.

10 Accordingly, this Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition is closed. However the petitioner is at liberty to establish all her defence before the learned Magistrate during the enquiry.

17.07.2025

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Speaking /Non-speaking order

To

The Fast Track Court V
at Magistrate Level for Trial of Cases
under NI Act, Saidapet, Chennai.

P.VELMURUGAN, J.

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Crl.O.P.No.585 of 2025

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