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

\+ CRL.M.C. 1053/2024

SANIT KUMAR SHARMA .....Petitioner

Through: Mr. Yuganshu Sharma and Mr. Sarthak Vashisht, Advs. along with petitioner in person.

versus

STATE GOVT. OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Nawal Kishore Jha, APP for the State.
Mr. Shahrukh Ejaz and Mr. Palak Singh Parihar, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

O R D E R

% 14.01.2025

1. The present petition has been filed seeking quashing and setting aside of order dated 01.07.2023 passed by the Court of learned MM (NI Act), Digital Court, Patiala House Courts, New Delhi in CC NI ACT 7137/2021 titled as '*M/s Akbar Travels of India Pvt. Ltd. vs. Clickontrip India Pvt. Ltd. and Ors*.'

2. The learned counsel appearing on behalf of the petitioner has confined his submission only to the aspect that the cheque which was issued by the present petitioner/accused was not a valid cheque. Elaborating on his submission, he invites the attention of the court to the said cheque which is at page 55 of the petition.

3. He submits that the said cheque was an old MICR cheque as the drawee bank i.e. Syndicate Bank merged with Canara Bank and it is for the said reason, the cheque was dishonored.

4. In support of his contention, the attention of the court has also been drawn to the certificate issued by Canara Bank, which reads as under:-

> *"This is to certify that cheque no. 527685 in favour of Akbar Travels of India Pvt Ltd from account No 90221400000114 name of Clikontrip India Pvt Ltd dated 11/08/2021 the same was return on 13.08.2021 in return session due to return reason" BANK MICR CODE 025 EXEMPTED WEF 21.07.21". Since the cheques of e-Syndicate (MICR 025) was discontinued from 21.07.2021.*
> *This certificate is issued on the request of the customer without any responsibility on the part of the bank or any of his officers."*

5. He submits that since the cheque was not valid on the date when it was presented, therefore, the offence under section 138 NI Act cannot be said to have been committed in view of the proviso (a) to Section 138 of NI Act.

6. In support of his contention, learned counsel relied upon two decisions, one of the Jharkhand High Court in ***Md. Nasim Ansari vs. State of Jharkhand, 2021 (5) KarLJ 450*** and the other of the High Court of Judicature at Allahabad in ***Archana Singh Gautam vs. State of UP & Anr., 2024 SCC OnLine All 4599***.

7. On the other hand, learned counsel appearing on behalf of respondent/complainant submits that even if the present cheque was an old MICR cheque, the petitioner after receipt of the legal notice ought to have made the payment to show his *bona fide*. He submits that in a similar circumstance, this Court in ***Premanand Prusty vs. Sita Devi, 2023 SCC OnLine Del 7745*** had dismissed the petition seeking quashing of complaint case.

8. I have heard the learned counsel appearing on behalf of the petitioner, as well as, the learned counsel appearing on behalf of the respondent/complainant.

9. The short question to be decided in the present petition is whether the complaint deserves to be quashed only on the ground that the cheque was returned unpaid by the drawee bank for the reason that it was a non-MICR cheque.

10. The answer is not far to seek. This Court in ***Premanand Prusty*** *(supra)* while dealing with similar situation where the cheque had been dishonored for the reason that it was not a MICR cheque, has observed as under:

> ***"15. In this regard, this Court finds merit in the contention of the learned counsel for the complainant that even if the cheque was not encashed and had returned unpaid for the reasons that Bank was not accepting the MICR Code, the petitioner after receipt of legal notice could have made the payment to the complainant or could have issued a fresh cheque towards the discharge of his liability. The fact remains that the cheque in question, which has been undisputedly signed by the petitioner, was presented for encashment with the Bank by the complainant towards discharge of debt, which the complainant claims is reflected from the promissory notes and undertakings signed by the petitioner, and upon its presentation, the cheque had been returned unpaid by the Bank to the complainant. Thereafter, the petitioner had also failed to make payment of the amount in question to the complainant after service of legal notice and therefore, the present complaint was filed under Section 138 of NI Act.***
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> *16. In these circumstances, this Court finds no reason to quash the impugned orders and the complaint case, pending before the learned Trial Court.*
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> *17. However, it is clarified that the petitioner shall be at liberty to raise all these issues raised before the learned Trial Court at appropriate stage, and the learned Trial Court shall decide the case*

> *pending before it on its own merits, and without being influenced by any of the observations made hereinabove by this Court since the same are only for the purpose of deciding the present petition.*
> *18. Accordingly, the present petition stands dismissed alongwith pending applications."*
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> *[emphasis supplied]*

11. The aforesaid decision squarely applies to the facts of the present case as well. After the dishonor of cheque in question, the petitioner/accused could have issued another cheque or when the demand of cheque amount was made, he could have made the payment towards the discharge of his liability, which was not done. The petitioner cannot use the fact of non-MICR cheque as a ground to avoid the liability under Section 138 of NI Act, when it is not the case of the petitioner that the cheque in question was not issued in discharge of any existing liability. In any case, such a defence is a matter of trial in view of the rebutable presumption available to the complaint u/s 139 of NI Act.

12. In view of the above, this court does not find any merit in the present petition and accordingly the same is dismissed.

VIKAS MAHAJAN, J

JANUARY 14, 2025/NG