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

\+ **CRL.M.C. 1003/2025 & CRL.M.A. 4634/2025**

MS BEYOND TELE AND ORS .....Petitioners
Through: Mr. Praveen Suri, Adv.

versus

MS MICROMAX PVT LTD .....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **21.03.2025**

CRL.M.A. 4633/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CRL.M.C. 1003/2025 & CRL.M.A. 4634/2025

3. The present petition is filed challenging the order dated 16.01.2025 (hereafter '**impugned order**'), passed by the learned Trial Court, in Ct Case 5618/2019.

4. The brief facts of the case are that the respondent company filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 ('**NI Act**') alleging that a cheque issued by Petitioner No.1 company, signed by Petitioner No.2, had been returned unpaid with the remarks– 'Payment Stopped'. The complaint was filed against Petitioner No.1 company and its Directors– Petitioner Nos. 2 and 3.

5. The petitioners filed an application under Section 45 read with Section 73 of the Indian Evidence Act, 1872 praying that an expert may be appointed for comparison of the handwriting in

which the date and consideration amount is written on the cheque in question, both in words and numbers, with that of the handwriting of Petitioner No.2.

6. By the impugned order, the learned Trial Court dismissed the said application by placing reliance on the judgment in the case of ***Bir Singh v. Mukesh Kumar*** **: (2019) 4 SCC 197**.

7. The learned counsel for the petitioners submits that the cheque in dispute was given as a security cheque to the complainant.

8. He further submits that the learned Trial Court has failed to appreciate that the presumptions under the NI Act are rebuttable and even the judgment in the case of ***Bir Singh v. Mukesh Kumar*** (*supra*) provides that the payee has to adduce evidence to rebut the presumption that the cheque was issued in discharge of liability.

9. I have heard the learned counsel and perused the record.

10. In the present case, the signature on the subject cheque has not been disputed. The learned Trial Court while dismissing the concerned application has noted that in such circumstances, it does not matter as to who filled the remaining particulars.

11. The learned counsel for the petitioners has taken exception to the reliance placed on the judgment in the case of ***Bir Singh v. Mukesh Kumar*** (*supra*), where it was held that it is immaterial that the disputed cheque may have been filled in by any person other than the drawer, if the same is signed by the drawer. The relevant excerpt of the said judgment, that was also relied upon by the learned Trial Court, is reproduced hereunder:

> "***32.*** *The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused*

and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.
33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

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***36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.*"

(emphasis supplied)

12. It is argued by the learned counsel for the petitioners that the said judgment provides that it is open to the accused persons to adduce evidence to rebut the presumptions as envisaged in the NI Act. He submits that the same is sought to be done through the application under Section 45 read with Section 73 of the Indian Evidence Act, 1872.

13. The purpose of moving the said application thus seems to be to rebut the presumption that the subject cheque has been issued in discharge of any debt or liability by proving that the particulars in the subject cheque were not filled by Petitioner No.2.

14. In this relation, this Court considers it apposite to take note of the judgment of the Hon'ble Apex Court in the case of

Oriental Bank of Commerce v. Prabodh Kumar Tewari* : 2022 SCC OnLine SC 1089**, where while placing reliance on ***Bir Singh v. Mukesh Kumar (*supra*), it was held as under:

> "*4. The respondent admits that he signed and handed over a cheque to the appellant. According to the respondent a signed blank cheque was handed over by him.* ***The question which arises in the appeal is whether the High Court was correct in permitting the respondent to engage a hand-writing expert to determine whether the details that were filled in the cheque were in the hand of the respondent. For the reasons set out below, we have allowed this appeal against the order of the High Court for the reason that Section 139 of the NI Act raises a presumption that a drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a hand-writing expert on whether the respondent had filled in the details in the cheque would be immaterial to determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the hand-writing expert.***
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> *16. A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.*
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> *18.* ***For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.***"
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> (emphasis supplied)

15. It is relevant to note that the defence of the accused in the aforesaid case was that a blank cheque had been given towards security. As noted in the said case, the handwriting in which the particulars of the cheque in question are filled is irrelevant to the defence of whether the same was issued towards payment of debt or in discharge of a liability. The aforesaid judgment makes it

clear that it is immaterial as to who has filled the particulars in the cheque in dispute as long as the signature is not in dispute. The same has no bearance on the statutory presumption stipulated in Section 139 of the NI Act. The argument of the petitioners is thus meritless.

16. This Court also considers it apposite to refer to the case of ***Ravi Chopra v. State*** **: 2008 SCC OnLine Del 351**, where while dealing with similar circumstances, a Coordinate Bench of this Court upheld the dismissal of the application filed by the petitioner therein for sending the cheque in dispute to CFSL for opinion on handwriting. The relevant portion of the said judgment is reproduced hereunder:

> "*18. **Section 20 NI Act** talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person thereby gives prima facie authority to the holder thereof "to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp." **Section 49** permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise **Section 86** states that where the holder acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. **Section 125 NI Act** permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. **These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.***

19. *The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments.* ***The presumption is of consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp.*** *The only exception to this is provided in proviso to Section 118...*

20. A collective reading of the above provisions shows that even under the scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. *There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a "material alteration" for the purposes of Section 87 NI Act.* ***What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act.***

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22. *Earlier in* ***K.C. Devassia, St. Joseph's Chity Fund, Kaithavana v. Subramanian Potti, II (1996) CCR 106*** *a learned Single Judge of the Kerala High Court came to the same conclusion by observing in para 5 as under:*

> *"The revision is filed against the order dismissing the application filed by the accused for sending the disputed cheque to a Hand Writing Expert and obtain his report.* ***The contention raised by the revision petitioner before me is that a blank cheque was handed over to the complainant as security for the transaction between the two and the cheque was subsequently filled up by the complainant.*** *Counsel adds that filling up of the cheques by the complainant will amount to a material alteration coming within the purview of Section 87 of the Act.* ***When a blank cheque is given, the payee can fill it up as he is empowered to do so under Section 20 of the Act****... **I have no quarrel regarding the proposition laid down in the above decisions. But as already stated, a material alteration is different from filling up a blank cheque by the payee**."(emphasis supplied)*

23. *Recently this Court in* ***Jaipal Singh Rana v. Swaraj Pal***

Singh ***(order dated 22nd February, 2008 in Crl.M.C. 7821/2006)*** *after discussing the law on the topic, held that in a case involving the offence under Section 138 NI Act,* ***the Magistrate would be justified in declining to refer the cheques for opinion of the handwriting expert where the signatures of the drawer on the cheque were not disputed by the drawer****…It may be added here that there may be good reasons for not dishonouring a cheque merely because the ink of the signature and ink of the material particulars is different or that the handwriting is different. Numerous situations can be thought of where the handwriting and the ink can differ…*"

(emphasis supplied)

17. As noted above, the signature on the cheque in question is not disputed. It is also not disputed that the said cheque was given to the respondent. Insofar as the handwriting of the date and consideration amount as well as the argument in relation to the subject cheque being issued as a security is concerned, as opined in the aforesaid judgments, the same is irrelevant and the presumption which is raised by the admission of signature on the cheque cannot be rebutted by opinion of a handwriting expert.

18. In view of the aforesaid discussion, the learned Trial Court has rightly rejected the application filed by the petitioners.

19. The present petition is manifestly frivolous and appears to be nothing but an attempt to protract the proceedings.

20. The present petition is therefore dismissed with a cost of ₹10,000/-, payable to the Delhi High Court Legal Services Committee, within a period of four weeks from date.

21. Let the proof of deposit of cost be furnished to the Registry of this Court.

AMIT MAHAJAN, J

MARCH 21, 2025