



2025:DHC:10893



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

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Date of Decision: December 02, 2025

+ **CRL.M.C. 2523/2020 & CRL.M.A. 17847/2020**
M/S QURESHI MUTTON AND CHICKEN SHOP

.....Petitioner

Through: Mr. M. Sufian Siddiqui,
Mr. Rakesh Bhugra & Mr.
M. Niyazuddin, Advs.

versus

THE STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Raj Kumar, APP for
the State.
Mr. Ashwani Kaushik for
Mr. Mayank Goel, Adv.
for R-2.

+ **CRL.M.C. 293/2021 & CRL.M.A. 1521/2021**
M/S QURESHI MUTTON AND CHICKEN SHOP

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M. Niyazuddin, Advs.

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Mr. Ashwani Kaushik for
Mr. Mayank Goel, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

Signature Not Verified

Signed By: HARMINDER KAUR
Signing Date: 05.12.2025
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1. The present petitions have been filed by the Petitioner under Section 482 of the Code of Criminal procedure, 1973 ('CrPC') seeking setting aside of the summoning orders dated 22.10.2020 in Complaint Case No. 6827/2020 and 16.01.2021 in Complaint Case Nos. 1038/2020. The petitioner also seeks the consequential relief of quashing of the aforesaid complaint cases filed under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') read with 142 of the NI Act.

2. Succinctly stated, it is the case of the Respondent No. 2/Complainant that the accused is a Proprietorship Firm having GST No.07ASEPS6556M120 and is dealing in the business of Restaurants and hospitality for past several years. The proprietor Mr. Samiuddin Qureshi was responsible/liable for the conduct and management of day-to-day affairs of the accused.

3. It is alleged, in October 2019, through a real estate agent, the accused approached the complainant for taking on lease a commercial premises located at Shop No. SG-44, Ground Floor, Galleria Market, Gurugram, Haryana, for the purpose of opening a mutton and chicken outlet. After negotiations regarding various terms, the parties entered into a duly registered Lease Agreement on 10.10.2019 incorporating the agreed terms and conditions.

4. It is alleged that the accused regularly paid rent for the initial four months, i.e., up to March 2020, but thereafter started defaulting in rental payments from April 2020 onwards. For the discharge of monthly rent for April, May and June 2020, the accused had issued three cheques of ₹4,86,000/- each, bearing Cheque No. 000082 dated 07.04.2020, Cheque No. 000083 dated



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07.05.2020 and Cheque No. 000084 dated 07.06.2020, drawn on Kotak Mahindra Bank. For the discharge of monthly rent of August, September and October 2020, the accused had issued three cheques of ₹4,86,000/- each, bearing Cheque No. 000086 dated 07.08.2020, Cheque No. 000087 dated 07.09.2020 and Cheque No. 000088 dated 07.10.2020, drawn on Kotak Mahindra Bank.

5. It is alleged that the complainant presented these cheques for encashment; with his Banker, HDFC Bank Branch Vasant Vihar, however, all the cheques were returned dishonored on different occasions, *vide* separate return memos.

a) Cheque number 000082 and 000083 were returned *vide* return memo dated 23.06.2020 with remarks "*Payment Stopped by the Drawer*" and the cheque number 000084 was returned *vide* return memo 10.06.2020 with the remarks "*Funds Insufficient*".

b) Cheque number 000086 and 000087 were returned *vide* return memo dated 07.10.2020 and the cheque number 000088 was returned *vide* return memo 12.10.2020 with remarks "*Payment Stopped by the Drawer*".

6. It was further alleged that despite repeated attempts to resolve the matter amicably, the accused avoided making payment of the due amount. The complainant claims that multiple legal notices and replies were exchanged between the parties, but despite issuance and receipt of a statutory notices dated 08.07.2020 and 03.11.2020 under Section 138 of the NI



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Act, the accused has failed to clear the cheque amounts within the statutory period of 15 days.

7. Hence, the Respondent no. 2 filed the subject complaints before the learned Metropolitan Magistrate ('MM').

a) The Complaint case viz. CC no. 6827/2020 has been filed *qua* three cheques bearing no. 000082, 000083, 000084 of Rs.4,86,000/- each apropos the rent of April, May & June 2020.

b) The Complaint case viz. CC no. 1038/2020 has been filed *qua* three cheques bearing no. 000086, 000087, 000088 of Rs.4,86,000/- each apropos the rent of August, September & October 2020.

8. As noted above, the learned MM by the aforesaid orders summoned the Petitioner for the offence under Section 138 of the NI Act.

9. Aggrieved, the Petitioner has filed the present petitions.

10. The learned counsel for the petitioner submitted that the Petitioner has been wrongly summoned in the present case. He submits that no legally enforceable liability *qua* the cheques in question existed which is a *sine qua non* for the initiation of proceedings under section 138 NI Act.

11. He submits that the Lease Agreement was terminated by the Petitioner *vide* Notice dated 07.06.2020. He further submits that the complainant has deposited Post Dated Security Rent Cheques despite having received the vacant, physical possession and the keys of the demised property from the Petitioner, in the month of July, 2020.



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12. It is further submitted that the property had been further let-out by the Respondent No. 2 to a third party and thus, the term of three years of lock-in period as stipulated in the Lease Agreement was violated by the Respondent No. 2 himself.

13. *Per Contra*, it is submitted on behalf of the Respondent that vehemently opposed the arguments raised and states that the Petitioner would be liable for the dishonor of the cheques as the issuance of the cheques and the signatures have not been disputed.

14. He further submits that the premises were never vacated by the Petitioner and were in his possession, however, he failed to clear the due rent amount despite repeated requests.

15. It is further submitted that as regards termination of the Lease Agreement, it stands recorded in Clause 1 that the Period of Lease Agreement was 6 years and as per Clause 2.1 of the Lease Agreement, the first three years of the Lease Agreement, from the date of commencement, were to be lock-in period for the Lessee, during which the Lessee agreed not to vacate the premises.

16. He further submits that the Petitioner could have only vacated the premises before the expiry of the said lock-in period, only by paying the rent for the remaining Lock-in Period which has not been done in the present case.

17. Hence, it is prayed that the present petition be dismissed.

18. Submissions heard and record perused.

Analysis



19. At the outset, it is relevant to note that the High Court is empowered to quash complaints under the NI Act at the pre-trial stage in the exercise of its inherent jurisdiction under Section 482 of the CrPC if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques or that no offence is made out from the admitted facts. The Hon'ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi) : 2022 SCC OnLine SC 513*** had discussed the scope of interference by the High Court against the issuance of process under the NI Act as under:

"8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.

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16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature



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are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

(emphasis supplied)

20. In line with the dictum of the Hon’ble Apex Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** (*supra*), thus, while exercising the power under Section 482 of the CrPC to quash a complaint at the pre-trial stage, it is pertinent for this Court to examine whether the factual defence is of such impeachable nature that the entire allegations made in the complaint is disproved.

21. At this stage, the Court is required only to examine whether *prima facie* ingredients of the offence are disclosed, and not to enter into a detailed scrutiny of sufficiency or reliability of material placed on record.

22. In the present case, the Petitioner has sought to prove their case by controverting that the cheques in question were not issued in discharge of any legally enforceable debt.

23. At the outset, it would be relevant to note that admittedly, the Petitioner Proprietorship Firm, through it’s proprietor Mr. Qureshi and Respondent no. 2 executed a formal Lease Agreement dated 10.10.2019 duly registered with the Registrar of



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Assurances at Gurugram, Haryana pertaining to the demised property.

24. Pertinently, the issuance of the cheques in question and the signatures thereon are also not in dispute. The Petitioner does not deny having issued the cheques nor does it dispute the execution of the Lease Agreement or the fact that it was in possession of the demised premises. It is trite law that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the cheque in discharge of a legally enforceable debt or liability are raised against the accused [**Ref. *Rangappa v. Sri Mohan* : (2010) 11 SCC 441**].

25. Pertinently, the entire edifice of the Petitioner's challenge rests on the plea that the Lease Agreement stood terminated on 07.06.2020 and that vacant possession of the shop was handed over to the complainant in July 2020, thereby extinguishing any existing liability with respect to the cheques presented. This defense, however, is neither borne out from any unimpeachable material placed before this Court nor does it, on the admitted facts, *ex facie* demolish the case of the complainant.

26. Conversely, the complainant specifically disputes the alleged termination of the lease and asserts that the cheques were issued towards the admitted liability of rent payable in terms of the lease, which remained unpaid. Even a perusal of the letters exchanged between the parties, it emerges that the Complainant



has specifically denied receiving the vacant possession or the keys of the demised property as asserted by the Petitioner.

27. It is well-established that this Court should refrain from expressing any views on disputed questions of fact in proceedings under Section 482 of the CrPC, as doing so could pre-empt the findings of the trial court. The relevant paragraphs of *Gunmala Sales Private Ltd. Vs. Anu Mehta* (*supra*) in this respect reads as under:

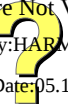
33. We may summarize our conclusions as follows:

a) Once in a complaint filed Under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed Under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint....Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers Under Section 482 of the Code. The High Court always uses





and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

28. Further, in lieu of the own admission of the Petitioner that he had handed over the vacant possession of the property in July 2020, the Petitioner would become liable to pay the rent for the month of April – June 2020, when he was admittedly in possession of the property. However, no explanation as to whether the rent was paid or not for this period, in this regard, has been brought forth by Petitioner. Hence, whether the lease was lawfully terminated, whether vacant physical possession was indeed handed over, whether the alleged handing over of keys constituted acceptance of termination, and whether any such act resulted in discharge of liability, are all questions that emanate from a mixed matrix of facts, documents and conduct of the parties.

29. Such issues require detailed appreciation of evidence, examination of witnesses and assessment of contractual clauses, all of which fall squarely within the province of the Trial Court and cannot be adjudicated conclusively at the stage of exercise of jurisdiction under Section 482 of the CrPC.

30. In fact, the plea that the cheques had been misused or presented despite absence of subsisting liability is also a pure



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question of defence, which the accused is entitled to raise at trial. The statutory presumption under Section 139 of the NI Act does not stand displaced merely upon a self-serving assertion that liability had ceased. The burden to rebut the presumption lies squarely upon the drawer of the cheques, which can only be discharged by adducing evidence.

31. The Petitioner has not placed any unimpeachable, incontrovertible or sterling material to demonstrate that the cheques were not backed by liability or that liability stood extinguished. The documents relied upon such as the alleged termination notice or communications exchanged, even if taken at face value, do not conclusively establish either termination of the lease or discharge of liability, and certainly do not rule out the complainant's version. In fact, these documents give rise to factual controversy, which cannot be resolved without trial.

32. The legal position is well-settled that when the execution of the cheque and signature are admitted, the presumption under the Act comes into play, and the High Court should not, in quashing proceedings, undertake a mini-trial by appreciating factual defences.

33. In view of the above, and keeping in mind the limited scope of jurisdiction under Section 482 of the CrPC in proceedings arising under the NI Act, this Court is of the considered view that no ground has been made out for quashing of the summoning orders or the complaint cases. The present petitions seek to raise factual defences which cannot be





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adjudicated without evidence, and permitting the same at this stage would amount to stifling a legitimate prosecution.

34. Needless to say, it will be open to the petitioner to justify the arguments taken by him during the course of the trial.

35. In view of the aforesaid discussion, I find no merit in the present petitions.

36. The present petitions are therefore dismissed. Pending Application(s), if any, also stand disposed of.

37. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

DECEMBER 2, 2025

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