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

\+ CRL.M.C. 1881/2023 & CRL.M.A. 7181/2023

NIKITA GUPTA AND ANR .....Petitioners

Through: Mr. Deepak Dhingra, Advocate (through Vc).

versus

K P DIAMONDS PVT LTD .....Respondent

Through: Mr. Bhavesh Kumar Sharma and Ms. Gudiya Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

<u>O R D E R</u>

% **07.04.2025**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Section 482 of the Cr.P.C. seeking the following prayers:

> "A. Quash/recall the order of summoning dated 2.11.2019 and quash Criminal Complaint no. 11597 of 2019 filed by respondent no. 1 against the Petitioners before Metropolitan Magistrate (NI Act)-03, Central , Tis Hazari Courts, Delhi;
> B. Pass such further and/or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. It is the case of the petitioners that respondent no. 1/complainant is a Private Limited Company engaged in selling and purchasing diamond and gold jewellery. Petitioner No. 1 is the proprietor of petitioner no. 2/firm- M/s Siddhi Jewels. During May 2019, petitioner

no. 2 had purchased certain diamond and gold jewellery from respondent no. 1 *vide* two invoices being Invoice No. 54 and Invoice No. 78 for a sum of Rs. 10,10,782/- and Rs. 4.01,698/-, respectively. It is alleged by respondent no. 1 that Krishan Kumar Gupta *i.e.,* father of the petitioner (hereinafter referred to as, 'proforma respondent') who is an authorised signatory and managing person of M/s Siddhi Jewels, had issued a cheque bearing no. 203711 drawn on the Oriental Bank of Commerce, Institutional Area, Hauz Khas for a sum of Rs. 3,68,363/- to respondent no.1 which was dishonoured upon presentation on 27.05.2019. Later Krishan Kumar Gupta had issued cheques bearing no. 203722 for a sum of Rs. 2,15,708/- cheque no. 203723 for a sum of Rs. 1,85,990/- and cheque no. 203714 for a sum of Rs. 6,42,419/- all drawn on the Oriental Bank of Commerce in his personal capacity. Out of the aforesaid cheques issued, 2 of them were dishonoured. After the cheques were dishonoured, the proforma respondent further issued 3 cheques bearing no. 040747 dated 26.08.2019 for a sum of Rs. 2,00,000/-, cheque no. 040748 dated 31.08.2019 for a sum of Rs, 2,00,000/- and cheque no. 040749 dated 07.09.2019 for a sum of Rs. 2,42,419/- in favour of respondent no. 1. The said cheques were drawn on the personal account of the proforma respondent with the Federal Bank, Shivalik Branch, which were returned unpaid *vide* cheque returning memos dated 27.08.2019, 02.09.2019 and 09.09.2019, respectively. Thereafter, a notice was issued against the petitioners and proforma respondent by respondent no. 1 on 25.09.2019 and, subsequently, a Complaint Case No. 11597/2019 was registered under Section 138/142 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act') on 16.10.2019 before the learned CMM, (Central), Tis, Hazari Courts. On 02.11.2019, the learned Metropolitan Magistrate after perusing the complaint and after taking pre-summoning evidence of the complainant had issued summons against the petitioner no.1, petitioner no. 2 firm and the proforma respondent. Learned counsel for the petitioners submits that petitioner no. 1 was neither an authorised signatory to the cheques which are the subject matter of the complaint nor do they bear her signature or the name of petitioner no. 2/firm and were issued in a personal capacity by the proforma respondent and, therefore, no *prima facie* case has been made out for summoning the present petitioners.

4. Learned counsel for the petitioner has placed reliance on the following judgements:

i. Alka Khandu Avhad v. Amar Syamprasad Mishra, (2021) 4 SCC 675;

ii. Aparna A. Shah v. Sheth Developers Pvt. Ltd. & Anr., (2013) 8 SCC 71;

iii. Jugesh Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683;

iv. Krishna Trading Co. v. State of Gujarat, 2017 SCC OnLine Guj 2589;

v. B.S. Bhasi v. K.M. Purushotham Das, 2017 SCC OnLine Ker 15302;

vi. Jayaprabha Harikumaran Thampi v. Don Bosco, 2014 SCC OnLine Ker 25745.

5. Learned counsel appearing on behalf of respondent no.1/complainant submits that in pursuance to the summoning order, the

petitioners have since appeared before the learned Trial Court on several occasions, therefore, the present petition is not maintainable. Further, a notice under Section 251 of the Cr.P.C. has already been framed against the proforma respondent-Krishan Kumar Gupta for the offence punishable under Section 138 of the NI Act by the learned Metropolitan Magistrate on 18.03.2023. It is also pointed out by the learned counsel that the subject cheques which had been dishonoured had been issued towards the liability of M/s Siddhi Jewels (petitioner no. 2) and, therefore, the petitioner no.1 being a proprietor is also liable to be tried under Section 138 of the NI Act even though the subject cheques were not issued by her.

6. Heard learned counsels for the parties and perused the records.

7. In the present case, the three subject cheques of the complaint were issued by the proforma respondent and drawn on the Federal Bank, Shivalik Branch, in his personal capacity to the complainant/respondent no. 1. It is pertinent to note that neither petitioner no. 1-Nikita Gupta nor petitioner no.2/firm- M/s Siddhi Jewels had issued the subject cheques to the complainant. On a pointed query, learned counsel for respondent no. 1 submits that the subject cheques were issued from the bank account maintained by proforma respondent- Krishan Kumar Gupta in his personal capacity. Therefore, the three cheques which had been dishonoured were, in fact, issued by the proforma respondent from his personal account and not petitioner no. 1 or petitioner no. 2/firm.

8. Reliance has been placed on the following judgement of the Hon'ble Supreme Court in **Alka Khandu Avhad v. Amar Syamprasad Mishra, (2021) 4 SCC 675,** wherein, it has been observed and held as

under:

> "9. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:
> 9.1. That the cheque is drawn by a person and on an account maintained by him with a banker.
> 9.2. For the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability.
> 9.3. The said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.
> **10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."**

(emphasis supplied)

9. In view of the above discussion and the law laid down by the Hon'ble Supreme Court in **Alka Khandu Avhad** *(supra)* the present petition is allowed. The summoning order dated 02.11.2019 passed by the learned Metropolitan Magistrate (NI Act)-03, Central, Tis Hazari Courts, Delhi and Criminal Complaint No. 11597/2019 filed by respondent no. 1/complainant company qua the petitioners are hereby quashed and set aside.

10. The present petition is allowed and disposed of accordingly.

11. Pending application(s), if any, are also disposed of.

12. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

APRIL 7, 2025/bsr/sc

Click here to check corrigendum, if any