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

+ CRL.M.C. 1688/2024 & CRL.M.A. 6478/2024 STAY, CRL.M.A. 6479/2024 EXEMPTION FROM FILING PERSONAL APPEARANCE, CRL.M.A. 6480/2024 EXEMPTION FROM FILING CERTIFIED, FAIR, TYPED AND LEGIBLE COPIES ETC.

SUBHASISH MITRA

.....Petitioner

Through: Mr. Chetan Roy, Mr. Amandeep Singh, Mr. Prakhar Sah & Mr. Pawan, Advs.

versus

M/S HERO FINCORP LTD

.....Respondent

Through: Mr. Mudit Bir Kohli, Adv.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

04.07.2025

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1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973, seeking quashing of the summoning order dated 23.05.2023 passed by the Ld. MM(NI Act) Digital Court-3 (South), Saket Court in CC NI Act no. 3613 of 2023 titled as "Hero Fincorp Ltd. v. M/s Evergreen Enviro Pvt. Ltd. & Ors." and the proceedings emanating therefrom.

2. As per the factual background, respondent filed a complaint under Section 138 Negotiable Instruments Act against M/s Evergreen Enviro Pvt. Ltd. and its directors Rajeev Shrivastava and Subhasish Mitra.



3. The Ld. Trial Court vide order dated 23.05.2023 took cognizance of offence under Section 138 NI Act on account of dishonour of 3 cheques dated 22.02.2023 and summoned the accused persons including the petitioner herein.

4. The Ld. Counsel for the petitioner submits that at the time of issuance of the impugned cheques or even at the time of commission of offence under Section 138 NI Act, the petitioner was neither the director of M/s Evergreen Enviro Pvt. Ltd. nor in-charge of the day-to-day affairs/business of M/s Evergreen Enviro Pvt. Ltd. He had in fact resigned from M/s Evergreen Enviro Pvt. Ltd. on 24.01.2023 and the factum of the resignation is duly reflected in the master data taken from the site of Ministry of Corporate Affairs. He further submits that the said data is part of the record of the Trial Court, having been filed by the respondent himself. But despite the same the Ld. Trial Court took cognizance and issued summons to the petitioner and therefore the order issuing summons to the petitioner is not sustainable.

5. Mr. Mudit Bir Kohli, Ld. Counsel appearing for the respondent fairly states that petitioner Subhasish Mitra was not the director of M/s Evergreen Enviro Pvt. Ltd. at the time of the issuance of cheque, having already resigned on 24.01.2023. He does not challenge the genuineness of MCA data placed on record and rather admits that respondent itself had placed the same as part of the Trial Court record. He has no objection in case the present petition be allowed and the summoning order dated 23.05.2023 *qua* the present petitioner be set aside.

6. As per the MCA data, petitioner Subhasish Mitra became director of M/s Evergreen Enviro Pvt. Ltd. on 26.03.2012 and resigned on 24.01.2023. The cheques regarding which the dispute has travelled upto the court were



issued on 22.02.2023. The letter is clearly, after the petitioner had severed his ties with M/s. Evergreen Enviro Pvt. Ltd. and, therefore, can in no way be responsible for the conduct of business at the relevant time.

7. Since petitioner was neither the director of the company nor responsible for day-to-day affairs/business of the company on the date of the issuance of cheque or the commission of the offence, he is not liable under Section 138 of the Negotiable Instruments Act.

8. The order dated 23.05.2023 of summoning of the present petitioner qua offence under Section 38 NI Act is erroneous and therefore set aside.

9. The petition is accordingly, allowed and disposed of.

RAVINDER DUDEJA, J

JULY 4, 2025/GS/NA