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

+ **W.P.(CRL) 506/2019 & CrI.M.A. 3547/2019**

ASHOK KUMAR

.....Petitioner

Through: Mr. Adit S. Pujari, Ms. Mantika
Vohra & Ms. Vanya Chhabra,
Advocates

Versus

STATE & ANR.

.....Respondents

Through: Mr. Anand V. Khatri, Additional
Standing Counsel

+ **W.P.(CRL) 524/2019 & CrI.M.A. 3649/2019**

ASHOK KUMAR

.....Petitioner

Through: Mr. Adit S. Pujari, Ms. Mantika
Vohra & Ms. Vanya Chhabra,
Advocates

Versus

STATE & ANR.

.....Respondents

Through: Mr. Anand V. Khatri, Additional
Standing Counsel

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **28.04.2025**

1. These Petitions under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. have been filed by the Petitioner seeking quashing of the two Orders dated 06.12.2018 passed by the learned Additional Session Judge in CRL. REV. 657/2018 and CRL. REV. 658/2018 upholding the Order dated 21.06.2018 passed by the learned Metropolitan Magistrate in CC No. 515863 & 516146/16, whereby Petitioner's Applications seeking discharge, have been dismissed.



2. The facts in brief are that Respondent No.2 /Complainant filed two separate Complaints under Section 138 of the Negotiable Instruments Act against the Petitioner and others, on the basis of dishonour of cheques purportedly issued by him in his capacity as Director of M/s Kassa Finvest Pvt. Ltd. for a sum of ₹ 12 Lacs and ₹19 Lacs respectively.
3. It is submitted that the Complaints under Section 138 of NI Act were not maintainable for the reason that the Legal Notices were issued to M/s Kassa Holding and Consultants Pvt. Ltd., whereas the cheques were issued by M/s Kassa Finvest Pvt. Ltd. The Petitioner happened to be the Director in both the Companies but without there-being a Legal Notice sent to M/s Kassa Finvest Pvt. Ltd., the Complaint under Section 138 of the Act could not have been filed. Thus, quashing of the Complaints is sought, by these Petitions.
4. *The Complainant/Respondent No.2 has been duly served and even Court Notice was also issued to him, despite which he has chosen not to appear in these petitions.*
5. *Learned Counsel for the Petitioners* has submitted that the Complaints under Section 138 of NI Act were filed in regard to dishonour of cheques dated 10.12.2014, 20.01.2015, 19.02.2015 and 19.03.2015, issued by M/s Kassa Finvest Pvt. Ltd, which were signed by the Petitioner in the capacity of its Director / Authorized Signatory. Merely because M/s Kassa Finvest Pvt. Ltd. is sister concern of M/s Kassa Holding and Consultants Pvt. Ltd., would not make it as one entity as both are two independent entities. It is, therefore, submitted that the Complaint under Section 138 of NI Act itself is not maintainable and the Petitioner as the Director, is entitled to be discharged.



6. Submissions heard and record perused.

7. It has been correctly submitted that for a Complaint under Section 138 of NI Act to be maintainable, the condition precedent is service of Legal Notice in regard to dishonour of cheque. Clearly, the objective is to give an opportunity to the errant Respondent to make payment of the dishonoured cheque and to avoid any liability under Section 138 NI Act.

8. The moment a cheque is bounced, it cannot be presumed that the drawer is dishonest. There may be genuine reasons for the return of the cheque. Therefore, it is necessary to bring such dishonour to the notice of the drawer so that, he may correct his mistake and thus, avoiding criminal prosecution. The same has been held in Central Bank of India Vs. Saxons Farms, (1999) 8 SCC 221.

9. Pertinently, the Legal Notice had been sent to *M/s Kassa Holding and Consultants Pvt. Ltd* and to the Petitioner being its Director, whereas in fact the cheques were issued by *M/s Kassa Finvest Pvt. Ltd*. Hence, in the absence of any Legal Notice to *M/s Kassa Finvest Pvt. Ltd*, the Petitioner as its Director, cannot be held liable.

10. In view of the above, the impugned Orders dated 06.12.2018 passed by the learned Additional Session Judge in CRL. REV. 657/2018 and CRL. REV. 658/2018 and the Orders dated 21.06.2018 passed by the learned Metropolitan Magistrate in CC No. 515863 & 516146/16 are hereby set aside and the Petitioner is discharged.

11. These Petitions and pending Applications are accordingly disposed of.

NEENA BANSAL KRISHNA, J

APRIL 28, 2025/r