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

\+ **CRL.M.C. 1674/2025 & CRL.M.A. 7560/2025**

ANSHU DWIVEDI .....Petitioner

Through: Mr. Suyash Kumar Sinha, Ms. Yogita Sunaria, Ms. Amanpreet Kaur and Ms. Udita Goel, Advocates.

versus

SAVE HOUSING FINANCE LIMITED .....Respondent

Through: Mr. Lalit Kumar, Advocate (through VC).

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.11.2025**

1. The present petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, seeking quashing of the proceedings in complaint case being CC No. 9496/2020 filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**').

2. Briefly stated, it is alleged that the petitioner approached the respondent company to avail a home loan and entered into a loan agreement dated 20.06.2016 for an amount of Rs. 24,44,389/- at the rate of 13.5% per annum for 240 months. It is alleged that the petitioner failed to make any payments towards their loan liability. It is alleged that after repeated requests and reminders the petitioner issued a cheque bearing No. 190842 dated 11.09.2020 for an amount of 46,32,216/- to the respondent in order to discharge his liability.

3. It is alleged that the said cheque, on presentation, was dishonored and returned *vide* return memo dated 15.09.2020 with

remarks "*funds insufficient*". Subsequently, upon the alleged non-payment of the cheque amount within the statutory period despite the receipt of demand notice, the respondent filed a complaint under Section 138 of the NI Act.

4. The learned counsel for the petitioner submits that as per the alleged statement of accounts of the petitioner maintained by the respondent company the actual amount due towards the respondent was Rs. 44,02,966/-. He submits that as per the respondent's own case, the dishonored cheque of Rs. 46,32,216/- included an amount of Rs.2,29,250 as legal charges which is not a legally enforceable debt. He submits that thus, the cheque for amount of Rs. 46,32,216/- cannot be held to be issued for legally enforceable debt so as to attract provisions of Section 138 of the NI Act.

5. At the outset, it is relevant to note that this Court can quash complaints under the NI Act at the pretrial stage in the exercise of its inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') if such unimpeachable material is brought forth by the accused persons which indicates that accused was 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 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)

6. 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 528 of the BNSS 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.

7. It is pertinent to note that during the course of arguments, the learned counsel for the petitioner has not denied the

petitioner's signature on the subject cheque. The only argument advanced in Court is that the amount filled in the subject cheque also included legal charges apart from the alleged dues, which the complainant claims to be recoverable from the petitioner.

8. It is the case of the petitioner that the legal charges, which the complainant claims, is not a legally enforceable debt so as to fall within the purview of Section 138 of the NI Act.

9. Perusal of the statement of account of the petitioner indicates that the complainant is claiming money on account of non-payment of not only the principal amount of the loan but also the interest as well as other charges. The complainant claims that the cheque was issued by the petitioner for total of such amount which it claimed to be due and payable on account of default by the petitioner.

10. Once it is not disputed that the subject cheque was signed by the petitioner, then the amount filled in the cheque would be presumed to be legally enforceable debt. It is not the case of the petitioner that the amount was filled or the cheque was signed due to inadvertence. Therefore, the argument raised by the petitioner is meritless.

11. I, therefore, find no merit in this petition.

12. Accordingly, the petition is dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

NOVEMBER 14, 2025
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