$~28

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

\+ **CRL.M.C. 1148/2020 & CRL.M.A. 4468/2020, CRL.M.A. 773/2021, CRL.M.A. 5525/2021**

GIRISH PESHORIA .....Petitioner

Through: Mr. Rajat Aneja & Mr Abhinav Chauhan, Advs.

versus

STATE & ANR. .....Respondents

Through: Mr. Raj Kumar, APP for the State.
Ms. Manjula Gandhi, MR. Rahul Dubey & Mr. Shivam Makkar, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **03.11.2025**

1. The present petition is filed seeking quashing of the criminal complaint no. 14719/2019 that was filed by the respondent Harinder/ complainant against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 (‘**NI Act**’).

2. Briefly stated, it is the case of the complainant that a cheque for a sum of ₹4 crores that was given by the petitioner (brother of the complainant) pursuant to a settlement had been dishonoured upon presentation and returned with the reasons– “Stop Payment/ Funds Insufficient”. By order dated 14.12.2018, in OMP (I) Nos. 8/2018 and 10/2018, this Court had recorded the settlement between the parties in relation to two properties, that is, Maharani Bagh Property and Faridabad Property. The

statement of the parties was also recorded. One of the terms of settlement was that the petitioner will pay a sum of ₹4 crores to the complainant within six months from date of settlement– 14.12.2018, and the said sum was to be secured by furnishing a post-dated cheque within five days. In terms of the settlement, the petitioner provided the subject cheque to the complainant on 19.12.2018. As the petitioner never made any payment towards his liability and stalled the performance of the settlement, the complainant filed a contempt petition– Cont. Cas(C) No. 583/2019. As the petitioner had allegedly failed to adhere to the obligations under settlement, the cheque was presented. The dishonour of the subject cheque led to the filing of the complaint.

3. The learned Trial Court summoned the petitioner by order dated 17.08.2019, which has also been challenged in the present petition.

4. This Court, on the very first date of hearing, had directed that Respondent No.2/ complainant be treated as Respondent as State was arrayed only as a proforma party. The amended memo of parties to this effect has also been placed on record.

5. The learned counsel for the petitioner submits that on the date of the presentation of cheque, there existed no legally enforceable debt or liability against the petitioner. He submits that in terms of the settlement, the execution of the relinquishment deeds was to be completed within one month thereof, that is, by 12.01.2019, however, the deeds came to be executed only on 14.09.2021.

6. He relies on a detailed list of dates to show that the settlement was *qua* two properties and the amount of ₹4 crores

was to be paid within six months, following the transfer of the properties, which was stipulated to be completed within one month from date of settlement. He submits that the amount was payable as the same pertains to the difference in the valuation of both the properties, and the petitioner was to pay the said amount after taking a loan against the Faridabad Property which was to be relinquished in his favour. He submits that even though the process of transfer of properties could not be completed as was envisaged in the settlement, the complainant maliciously presented the subject cheque.

7. He submits that the petitioner in his reply dated 10.06.2019 to the legal notice sent on behalf of the complainant had also specifically requested the complainant to not present the security cheque and pointed out the failure on part of the complainant to comply with the understanding.

8. He submits that the complainant had filed an execution petition wherein after dismissal of the petitioner's objections, the petitioner approached this Court in appeal [EFA (OS) No. 13/2022]. He submits that in the said proceedings, ₹4.01 crores was deposited in the bank of the complainant and the complainant has furnished a bank guarantee against the same. He points out that a Civil Suit has also been filed by the petitioner seeking a decree of declaration *qua* the condition to pay a sum of ₹4 crores in settlement dated 14.12.2018 as fraudulent and void.

9. *Per contra*, the learned counsel for the complainant emphasises that the subject cheque was issued in compliance of the order dated 14.12.2018. She submits that although it is argued that payment of ₹4 crores was contingent on compliance of

certain other terms, none of the statements so recorded pursuant to the settlement reflect the same. She submits that as per the terms, the amount was payable within six months "from today", that is, 14.12.2018, and it was also agreed that interest at the rate of 18% per annum will run on the sum from the date of dishonour.

10. She submits that the payment of ₹4 crores had no nexus with the relinquishment deeds.

11. I have heard the counsel and perused the record.

12. At the outset, it is relevant to note that this Court can quash complaints under the NI Act at the pre-trial stage in the exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 if such unimpeachable material is brought forth by the accused persons which warrants the same. 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.*
>
> xxx
>
> *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)

13. In the present case, it is undisputed that the subject cheque was given by the petitioner against the settlement arrived at between the parties. Before proceeding further, this Court considers it apposite to take note of the terms of settlement dated 14.12.2018 as were encompassed in the statement of the parties respectively. The relevant portion of the statement of the complainant, which was also recorded on 14.12.2018, is as follows:

"…The terms of settlement reached between us are as follow:

(i) The right, title and interest in the immoveablc property along with superstructure located at 14, Eastern Avenue, Maharani Bagh, New Delhi- 110065 (in short 'Maharani Bagh property') would vest in me.

(ii) Mr. Girish Peshoria would surrender possession of the first floor of Maharani Bagh property. The possession of the first floor will be handed over to me within six months from today.

(iii) The right, title and interest in the factory shed along with the land underneath which is located at 14/5; Mathura Road, Faridabad (in short 'Faridabad property') will vest in Mr. Girish Peshoria.

(iv) ***Mr. Girish Peshoria will pay a sum of Rs. 4 crores (Rs. Four Crores) to me within six months <u>from today</u>. The said sum of Rs. 4 crores will be secured by Mr. Girish Peshoria by furnishing a Post-Dated Cheque (PDC) for an equivalent amount within five days from today.***

(v) ***In case, a need arises to encash the PDC and on presentation, it is dishonoured, interest at the rate of 18% per annum will run on the sum of Rs. 4 crores from the date the PDC is dishonoured.***

(vi) In case any tax, charge, cess or liability of any nature is payable qua the Maharani Bagh property and the Faridabad property, which would include liability towards creditors and statutory authorities, which are due and payable as of today and those which may accrue hereafter, the same will be paid by the person in whom the right, title and interest in the property enures as per the instant settlement. In other words, insofar as Maharani Bagh property is concerned, the liability will be borne by me, while the liability with regard to Faridabad property will be borne by Mr. Girish Peshoria.

(vii) Both Mr. Girish Peshoria and myself will execute relinquishment deeds with respect to the said two properties qua which right, title and interest is given up by the other. In other words, I would execute a relinquishment deed vis-a-vis the Faridabad property while Mr. Girish Peshoria will execute a relinquishment deed in my favour in respect of the Maharani Bagh property. ***<u>Respective relinquishment deeds will be registered within one month from today.</u>***

(viii) Upon aforementioned terms and conditions being complied with, neither me nor Mr. Girish Peshoria or our respective legal heirs will claim any interest in the Faridabad property and the Maharani Bagh property."

(emphasis supplied)

14. It is the case of the petitioner that the offence under Section 138 of the NI Act is not made out against the petitioner as there was no legally enforceable debt on the date when the subject cheque was issued. The Hon'ble Apex Court in the case

of ***Jugesh Sehgal v. Shamsher Singh Gogi*** **: (2009) 14 SCC 683** had stipulated the ingredients to constitute an offence under Section 138 of the NI Act and noted that one such ingredient is that the cheque should have been issued for discharge of any debt or liability. The relevant portion of the judgement is reproduced hereunder:

> "***13.*** *It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:*
>
> *(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;*
>
> *(ii)* ***the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;***
>
> *(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;*
>
> *(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*
>
> *(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*
>
> *(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.*
>
> ***Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.***"
>
> (emphasis supplied)

15. Thus, the limited issue in the present case is as to whether the payment of ₹4 crores was contingent on registration of respective relinquishment deeds whereby there was no legitimate liability when the cheque was presented or if the payment of the

sum was a separate condition altogether.

16. While the petitioner has emphasised on the clause (vii) to contend that the relinquishment deeds were to be registered within one month from the date of settlement, the complainant has laid emphasis on clauses (iv) and (v) to contend that the amount of ₹4 crores became payable within 6 months from the date of settlement.

17. Although it is not explicitly mentioned that the payment of ₹4 crores was contingent on the registration of the relinquishment deeds, it can be deciphered from the terms of the settlement that the parties agreed upon a chronology of events, wherein the respective relinquishment deeds were to be registered within one month, while the amount was to be paid only after six months. In the opinion of this Court, the term *qua* payment of ₹4 crores cannot be read in isolation when the settlement is a composite one requiring obligations to be fulfilled by both the parties. Undisputably, the relinquishment deeds only came to be registered way later on 14.09.2021. In such circumstances, this Court finds merit in the argument of the petitioner that there was no legally enforceable debt in June, 2019 when the cheque was presented. It remains undisputed that at the time of presentation of cheque, the complainant had not fulfilled his obligation.

18. It is further pointed out that the petitioner has also challenged the condition of payment of the aforesaid amount in a civil suit. Even so, while the amount may be found to be payable to the complainant pursuant to registration of the relinquishment deeds, undisputably, on the date of presentation of the cheque, the complainant had not acted upon his obligation under the

terms either by executing the relinquishment deed *qua* the Faridabad Property. The breach in executing the relinquishment deed in time appears to have happened on both ends. In such circumstances, having failed to honor his obligation in terms of the settlement, the complainant cannot be allowed to reap benefits of the same.

19. Even otherwise, it is not denied that the said sum of ₹4 crores has been already deposited by the petitioner before this Court in EFA (OS) No. 13/2022, on the complainant giving a bank guarantee. The right, if any, of the complainant over the said amount would be decided in the pending proceedings. Thus, in the absence of obligation of the relinquishments deeds being executed, it is apparent that there was no legally enforceable debt at the time of presentation of subject cheque.

20. While this Court may have ordinarily refrained from interfering with the case at such a nascent stage, however, considering the peculiar facts of the case as well as the fact that the matter has been pending before this Court since the year 2020, this Court is persuaded to exercise its inherent jurisdiction in favour of the petitioner.

21. In view of the aforesaid discussion, this Court is of the opinion that the petitioner has made out a case for quashing of the complaint and all consequential proceedings arising therefrom, including the summoning order dated 17.08.2019.

22. The present petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

23. It is made clear that the observations in the present order are only in regard to existence of a legal liability on the relevant

date and this Court has not considered as to whether the said amount subsequently became due.

AMIT MAHAJAN, J

NOVEMBER 3, 2025
"SK"