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

+ CRL.M.C. 7462/2023 & CRL.M.A. 27824/2023, CRL.M.A. 17074/2024

RAKHI SETIA

.....Petitioner

Through: Mr. Amit Sharma, Adv.

versus

STATE(GOVT.OF NCT OF DELHI) & ANR. ....Respondents

Through: Mr. Hitesh Vali, APP for the State.

Mr. Shailendra Bhardwaj & Ms.

Aroma S. Bhardwaj, Adv.s. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**ORDER**

**24.01.2025**

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:-

“a) pass an order quashing and/or cancelling the Criminal Complaint NI ACT No.7983/2022 as against the petitioner herein pending on the files of the learned Chief Metropolitan Magistrate, South East District, Saket District Courts, Delhi as abuse of process of court and to secure the ends of justice;.

b) pass an order summoning all records and quash the proceedings Criminal Complaint NI ACT No.7983/ 2022 pending on the files of the learned Chief Metropolitan Magistrate, Dwarka District Court, Delhi; and

c) pass such other and/or further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. Learned counsel appearing on behalf of the petitioner submits that the impugned complaint dated 01.09.2022 has been filed with respect to 2



cheques *i.e.*, one Cheque bearing no. 497588 dated 18.07.2022 for Rs. 2,20,000/- drawn on Jammu & Kashmir Bank issued on behalf of Rab Rakha Pharmaceutical LLP, and the other Cheque bearing no. 251475 dated 27.06.2022 for Rs. 5,00,000/- has been drawn on Jammu & Kashmir Bank and signed by the present petitioner in her personal capacity.

4. It is the contention of the learned counsel for the petitioner that a legal notice dated 25.07.2022 was issued on behalf of the respondent to the petitioner in her personal capacity wherein a demand was made with respect to both the aforesaid cheques. Learned counsel for the petitioner has relied on judgment of the Hon'ble Supreme Court in *Himanshu vs. B. Shivamurthy & Anr., (2019) 3 SCC 797* to submit that the petitioner could not be made an accused with respect to a cheque issued from account of firm without making the partnership firm a party. Admittedly, it is pointed out that no notice was issued to the partnership firm but only to the petitioner. The following paragraphs of the aforesaid judgment are relied upon:-

“12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a company, every person, who at the time when the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for an on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.”



5. Learned counsel for the respondent fairly concedes that the notice was not issued to the partnership firm. It is pointed out that the notice was also issued to the present petitioner for the cheque which was issued from her personal account and was dishonoured. It is submitted, therefore, that the respondent does not press their case *qua* the cheque issued on behalf of Rab Rakha Pharmaceutical LLP. It is further submitted, however, that the complaint is otherwise valid for the cheque issued on behalf of the petitioner in her personal capacity. It is further pointed out that notice under Section 251 of the Cr.P.C. has not been framed till now.

6. A perusal of the record would reflect that the notice dated 25.07.2022 issued to the petitioner clearly made a demand for 2 cheques *i.e.*, the one issued in her personal capacity and the other with respect to the aforesaid partnership firm. The judgment relied upon by the learned counsel for the petitioner is with respect to the aspect when a person is sought to be prosecuted in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act, 1881') with the aid of Section 141 of the NI Act, 1881 and in such circumstances, the company or the partnership firm ought to be made a party. However, the record would reflect that the petitioner had issued a cheque in her personal capacity as well and the demand notice clearly states so.

7. Therefore, in these circumstances, the prosecution with respect to the cheque issued by the petitioner in her personal capacity will continue. The prosecution with respect to cheque bearing no. 497588 for Rs. 2,20,000/- drawn on Jammu & Kashmir Bank issued on behalf of Rab Rakha Pharmaceutical LLP is hereby quashed. The complaint with regard to cheque bearing no. 251475 for Rs. 5,00,000/- drawn on Jammu & Kashmir Bank



signed by the present petitioner shall continue before the learned Trial Court in accordance with law.

8. The petition stands disposed of in above terms.
9. Pending application(s), if any, also stands disposed of.

**AMIT SHARMA, J**

**JANUARY 24, 2025/nk**

*Click here to check corrigendum, if any*