



2025:DHC:2678



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

Reserved on: 10th January, 2025
Pronounced on: 17th April, 2025

+ CRL.M.C. 2161/2024 & CRL.M.A. 8396/2024 (Stay)

MR MANOJ GOYAL

.....Petitioner

Through: Dr. Harshvir Pratap Sharma, Sr. Adv., with
Mr. Akshu Jain, Mr. Akul Krishnan, Mr.
Amit Kumar, Ms. Stuti Jain, Advs.

versus

SH SUMIT BANSAL

.....Respondent

Through: Mr. Namit Suri with Mr. Rameezuddin Raja
and Ms. Tanya Sharma, Advs. along with
Respondent in person.

+ CRL.M.C. 7632/2023 & CRL.M.A. 28443/2023 (Stay)

MR MANOJ GOYAL

.....Petitioner

Through: Dr. Harshvir Pratap Sharma, Sr. Adv., with
Mr. Akshu Jain, Mr. Akul Krishnan, Mr.
Amit Kumar, Ms. Stuti Jain, Advs.

versus

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Through: Mr. Namit Suri with Mr. Rameezuddin Raja
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CRL.M.C. 7632/2023 and connected

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

JUDGMENT

AMIT SHARMA, J.

1. The present petitions under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') are being disposed of by a common judgement. The details of the petitions are as follows:

i) CRL.M.C. 2161/2024 is filed challenging and seeking to quash the Complaint Case no. 13508/2019 under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and the summoning and cognizance order dated 17.08.2019 emanating therefrom, pending before the learned Metropolitan Magistrate-03 (NW), Rohini, Delhi (hereinafter referred to as 'petition no. 1'); and

ii) CRL. M.C. 7632/2023 is filed challenging and seeking to quash the Complaint Case no. 743/2020 under Sections 138, 141 and 142 of the Act and the summoning and cognizance order dated 24.11.2022 emanating therefrom, pending before the learned Metropolitan Magistrate-03 (NW), Rohini, Delhi (hereinafter referred to as 'petition no. 2').

2. For the sake of brevity and convenience, petitioner- Mr. Manoj Goyal in CRL.M.C. 2161/2024 and CRL.M.C. 7632/2023 will be referred to as the 'petitioner' hereinafter.



AVERMENTS MADE IN THE COMPLAINT CASES

3. In petition no. 1, i.e., CRL. M.C. 2161/2024, the respondent herein filed a complaint dated 16.07.2019 against the petitioner and ‘M/s MGI Developers and Promoters’, of which the petitioner is the proprietor (hereinafter referred to as the ‘petitioner firm’) for the offences punishable under Sections 138, 141 and 142 of the Act. Averments made in the complaint for the sake of completeness read as under:

“***

2. That accused no.2 approached the complainant and introduced himself as the proprietor of accused no.1 and further appraised him that he is floating a Group Housing project under the name and style of “MGI MANSION” at Khasra no. 966 & 967 Village- Noor Nagar, Tehsil and District Gaziabad U.P and convinced him to invest some money in his above said project and in order to earn his confidence for his project he also gave his personal guarantee for the money, if the complainant opt to invest in his project.

3. That relying upon words of the accused no.2 and considering his past performance of earlier projects as told by him and his reputation, the complainant arranged Rs. 1,72,21,200/- (Rupees One Crore Seventy Two Lacs, Twenty One Thousand Two Hundred Only) and gave for investment in the abovesaid project of the accused for the purchase of property.

4. That you accused no.2 being proprietor of accused no.1 firm, executed an agreement to sell and other relevant documents regarding investment of the complainant in the project of the accused beside documents of his personal guarantee for the money.

5. That in the terms of agreement the accused also agreed/promised that if he would not be able to complete his project within time, then he will also give appreciation money/appreciation amount for the delayed period on the investment of the complainant.

6. That when the accused could not complete the project as per the Agreement and failed to deliver the possession of the property of complainant within



agreed period, therefore he issued and handed over a cheque for the appreciation money on the investment i.e. **Cheque no 562629 Dated 28/02/2019 of Rs 35,00,000/- (Rupees Thirty Five lacs only)** drawn on Punjab & Sindh Bank, Sector-9 Rohini Branch, Delhi, in favour of the complainant.

7. That the complainant presented the abovesaid cheque to his banker i.e. ESAF Bank, Sec.7, Rohini, Delhi but to the utter surprise of the complainant that the above mentioned cheque was dishonoured with remarks "**Funds Insufficient**" as the accused was not maintaining sufficient balance in his bank account on the date of presentation of the said cheque. Baker of the accused accordingly sent its cheque returning memo alongwith your aforesaid cheque to the banker of the complainant. The said cheque and returning memo were sent to the complainant by his banker on 10/05/2019.

8. That the complainant intimated the fate of the cheque to the accused no.2 and asked him to honour the cheque but he did not pay heed to his requests.

9. That immediately thereafter, the complainant served the requisite legal demand notice dated 30/05/2019 sent on 04/06/2019 to the accused through courier informing him that his cheques as mentioned above has been received back dishonoured with remarks '**Funds Insufficient**' Further, the accused was called upon to remit the payment of amount of the said cheque within 15 days from the receipt of this notice. The notice has been duly served upon the accused. The accused did not make payment of the cheque amount as demanded in the notice.

10. The said cheque was issued by accused with ulterior motive and malafide intentions and at the time of issuing of the said cheque he was fully aware of the fact that the same would be dishonoured on account of "**Funds Insufficient**" as he was not maintaining sufficient balance in his said account to honour the issued cheque, as such the accused is guilty of committing of offence punishable under Section 138 of Negotiable Instrument Act as amended up to date, **which provides the punishment of imprisonment of two years and payment of double of the cheque amount as fine.**

11. That the accused no 2 is responsible for the all the acts of accused no.1 being its proprietor therefore he is jointly and severally liable towards the complainant under Section 138,141,142 of Negotiable Instrument Act as amended upto date.

12. That the cause of action arose at Delhi, where the cheques in question was received, the bank of the complainant falls within jurisdiction of this Hon'ble Court and the amount was also payable at Delhi and the offence has been committed within the jurisdiction of this Hon'ble Court and hence this



Hon'ble Court has got the jurisdiction to entertain and try the present complaint.

13. That the cause of action for filing the complaint arose after the expiry of the period of 15 days from the service of the legal notice as the accused have failed to remit the payment demanded in the legal notice against the dishonoured cheque.”

4. In petition no. 2, i.e., CRL. M.C. 7632/2023, the respondent herein filed a complaint dated 24.12.2019 against the petitioner firm and the petitioner for the offences punishable under Sections 138, 141 and 142 of the Act. Averments made in the complaint for the sake of completeness read as under:

“****

2. That accused no.2 approached the complainant and introduced himself as the owner/proprietor of M/s MGI Developers and Promoters and further apprised him about their Project “MGI MANSION” at Khasra no. 966 & 967 Village- Noor Nagar, Tehsil & District Gaziabad, U.P and further expressed that they are in need of money for the project and convinced, the complainant to invest some money in their Project and ensured him good returns on it. He further told to the complainant that they have performed very well in their previous projects. He offered personal guarantee for money invested by himself and her wife Smt. Kavita Rani Goyal ensured guaranteed returns.

3. That believing on the assurances of the accused persons for repayment and considering their past performances as told by them, complainant, arranged and gave Rs. 1,72,21,200/- (Rupees One Crore Seventy Two Lacs, Twenty One Thousand Two Hundred Only) in total i.e his entire hard earned money, to the accused for investment in commercial units of the accused.

4. That accused executed an Agreement to sell and other documents including receipt of money with complainant with regard to the purchase of commercial units situated in ‘MGI Mansion, Khasra No. 966 & 967, Village Noor Nagar, Tehsil & District Gaziabad, U.P. and other relevant documents including Personal Guarantee of the accused and his wife Smt. Kavita Rani Goyal. It was further agreed between the parties that if the accused would fail in executing Sale Deed of the above said commercial units till 30/09/2018, then accused person would return the invested amount of the complainant in addition to appreciation amount.



5. That the accused and his wife Smt. Kavita Rani Goyal in order to win the confidence of the complainant, gave the complainant guarantee that in case their firm would fail in executing the Sale Deed of the above said commercial units given date and further fails in returning his money along with appreciation amount then they would issue cheques for the amount invested and appreciation amount from their personal bank account.

6. That when the accused could not execute the Sale Deed till 30/09/2018, in the terms of the Agreement to Sell, he in order to discharge their above said liability toward the complainant, issued a cheque for invested amount and three cheques for appreciation. A Cheque no. 000084 drawn at Punjab & Sind Bank, GNS Plaza, Near Redidison Blu Hotel, Site 4, Surajour, Greater Noida, U.P. was issued for appreciation amount in favour of complainant from his personal account to discharge his part personal liability towards the complainant.

7. That in terms of the Agreement to sell and after consultation with accused no.2, the complainant presented aforesaid cheques through his banker i.e, ESAF Bank Ltd. Sector 7, Rohini, Delhi to banker of accused for realisation, but to the utter surprise of complainant aforesaid cheques were dishonoured by the banker of accused for the reason ***"Funds Insufficient"***. The banker of accused accordingly sent their cheque returning memos alongwith aforesaid dishonoured cheques to the banker of complainant. The said cheques and returning memos were sent to complainant by the banker of accused on 29-10-2019. The accused was not maintaining sufficient balance in his said account on the date of presentation of the said cheques. On receiving back the said dishonoured cheques, the complainant intimated the fate of the cheques to the accused.

8. That the said cheques have been issued by accused with ulterior motive and mala fide intentions and at the time of issuing of said cheques the accused was fully aware of the fact that the same would be dishonoured on account of ***"Funds Insufficient"***, as he was not maintaining sufficient balance in his account to honour the cheques on the day of its presentation and as such the accused persons are guilty of committing of an offense punishable under sections 138,141,142 of Negotiable Instrument Act as amended up-to-date.

9. That immediately on receiving back the said dishonoured cheques, the complainant served the requisite notice dated 30-10-2019 sent on 13-11-2019 to the accused through Speed Post informing the him that his cheque and mentioned above has been received back dishonoured with the remarks ***"Funds Insufficient"***. Further the accused was called upon to remit the



payment of amount of the said cheques within 15 days from the receipt of this notice. The notice has been duly served upon the accused. The accused did not make the payment of the aforesaid cheques amount as demanded in the said notice.

10. That the accused despite of the service of the said notice has failed to remit the payment due under the said cheques and/or this outstanding amount and as such have committed offence under section 138,141 and 142 of the Banking Public Financial Institution and Negotiable Instrument Act, as amended up to date apart from other offences under other provisions of law.

11. That the cause of action arose at Delhi, where the cheques in question was received, the bank of the complainant falls within jurisdiction of this Hon'ble Court and the amount was also payable at Delhi and the offence has been committed within the jurisdiction of this Hon'ble Court and hence this Hon'ble Court has got the jurisdiction to entertain and try the present complaint.

12. That the cause of action for filing the complaint arose after the expiry of the period of 15 days from the service of the legal notice as the accused have failed to remit the payment demanded in the legal notice against the dishonoured cheque.”

SUBMISSIONS ON BEHALF OF THE PETITIONER

5.1. Learned Senior Counsel appearing on behalf of the petitioner submitted that the agreement to sell was for a period of 2 years and as per the clause 7c of the said agreement, in case of breach of the agreement, i.e., on failure to hand-over the commercial units to the respondent, a post-dated cheque for a sum of Rs. 35,00,000/- (Rupees thirty five lakhs only) bearing no. 057141 dated 30.09.2018 (hereinafter referred to as the ‘appreciation money’) was to be encashed by the respondent, over and above Rs. 1,72,21,200/- (Rupees one crore seventy two lakhs twenty one thousands and two hundred) (hereinafter referred to as ‘the principal amount’,) which was given to the respondent by the petitioner *vide* a post-dated cheque bearing no. 057140 dated 30.09.2018. It was submitted



that without any liability or debt, the said post-dated cheques have been misused by the respondent. It was further submitted that the respondent had filed 5 complaints against the petitioner, including the present ones. The said complaints are as under:

- a) Ct. Case No. 3298/2019 for Rs. 1,72,21,200/- crores and Rs. 35,00,000/- lakhs.
- b) Ct. Case No. 740/2020 for Rs. 35,00,000/- lakhs.
- c) Ct. Case No. 743/2020 for Rs. 35,00,000/- lakhs.
- d) Ct. Case No. 13508/2019 for Rs. 35,00,000/- lakhs.
- e) Ct. Case No. 2823/2019 for Rs. 1,72,21,200/- crores and Rs. 35,00,000/- lakhs.

Learned Senior Counsel submitted that an agreement for a period of two years with an alleged investment of Rs. 1,72,21,200/- (Rupees One crore seventy two lakhs twenty one thousands and two hundred only) cannot become Rs. 5,19,42,400/- (Rupees Five crores nineteen lakhs forty two thousands only.) Reliance was placed on the judgement of the Hon'ble Supreme Court in **Indus Airways Private Limited and Others vs. Magnum Aviation Private Limited and Another**¹, in which it was held that on the date of representation of the cheque, there should be a legally enforceable debt or other existing liability. Thus, the case of the petitioner is that there was no liability existing at the time of presentation of the cheques. Reliance is placed on paragraph 9 of the aforesaid judgement, which reads as under:

¹ (2014) 12 SCC 539



“9. The Explanation appended to Section 138 explains the meaning of the expression “debt or other liability” for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.”

5.2. It was further submitted that as per the entries made by the petitioner, the respondent had invested an amount of Rs. 66,50,000/- (Rupees sixty-six lakhs and fifty thousands only), whereas the petitioner had repaid an amount of Rs. 97,00,000/- (Rupees ninety-seven lakhs only) in the names of various family members of the respondent and therefore no liability was existing at the time of presentation of the said cheques.

5.3. Learned Senior Counsel for the petitioner submitted that an arbitration petition bearing no. 273/2023 is already pending before a Coordinate Bench of this Court for alleged violation of the same agreement to sell dated 07.11.2016. On this account, it is submitted that the subject matter of the said agreement is *sub judice* in the arbitration petition before the said Bench. Learned Senior Counsel for the petitioner submitted that the pendency of the arbitration



proceedings and the present complaints are violative of Article 20 of the Constitution of India, leading to multiple prosecutions on the same cause of action.

5.4. It was also argued by learned counsel for the petitioner that the respondent has concealed the filing of other complaints which is contradictory to the law laid down by the Hon'ble Supreme Court in **Damodar S. Prabhu vs. Sayed Babalal H.**², in which it was held that a complaint under the Act should mandatorily disclose if any other complaint(s) has been filed with respect to the same transaction. Learned Senior Counsel for the petitioner further submitted that the present petitions are also covered by the judgment of the Hon'ble Supreme Court in **State of Haryana and Others vs. Bhajan Lal and Others**³. Reliance was placed on paragraph 102 of the said judgement, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

² (2010) 5 SCC 663

³ 1992 Supp (1) SCC 335



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

5.5. Reliance was also placed on the following judgements/orders:

a) Meters and Instruments Private Limited and Another vs. Kanchan Mehta⁴

⁴ (2018) 1 SCC 560



- b) **Vijay Gopala Lohar vs. Pandurang Ramchandra Ghorpade and Another⁵**
- c) **ING Vysya Bank Limited and Another vs. State of Rajasthan and Another⁶**
- d) **Sanat Kumar vs. Sanjay Sharma in CRL. M.C. 5509/2022 dated 20.09.2024 by the Hon'ble Delhi High Court**
- e) **Dr. S. Jaitley & Another vs. State (NCT of Delhi) ⁷**

SUBMISSIONS ON BEHALF OF THE RESPONDENT

6.1. Learned counsel appearing on behalf of the respondent submitted that no case is made out for this Court to exercise its jurisdiction under Section 482 of the Cr.P.C. as there is an equally efficacious and alternate remedy with the petitioner before the learned Trial Court.

6.2. Learned counsel appearing on behalf of the respondent submitted that the averment made on behalf of the petitioner about receiving a sum of Rs. 66,50,000/- (Rupees sixty-six lakhs and fifty thousands only) from the respondent is incorrect inasmuch as the petitioner firm has itself issued receipt for the entire amount of Rs. 1,72,21,200/- (Rupees one crore seventy two lakhs twenty one thousands and two hundred rupees only) paid by the respondent. It was further submitted that the petitioner had not disputed the execution of

⁵ (2020) 14 SCC 806

⁶ (2015) 15 SCC 763

⁷ 2023:DHC:6464



agreement to sell dated 07.11.2016 as well as the issuance of promissory note alongwith the receipts and the 'no-due certificate.' It was submitted that the petitioner had fully and deliberately concealed the said documents from this Court. It was the case of the respondent that the sum of Rs. 1,72,21,200/- (Rupees one crore seventy two lakhs twenty one thousands and two hundred rupees only) had been paid to the petitioner firm through various means including the banking channels.

6.3. Learned counsel for the respondent submitted that the claim of the petitioner of paying Rs. 97,00,000/- (Rupees ninety seven lakhs only) to the respondent is again incorrect as he had failed to place on record a single document substantiating the said claim. It was further argued that the petitioner had deliberately concealed the fact that the petitioner and his wife, Ms. Kavita Rani Goyal had tendered and executed a personal guarantee dated 27.07.2018 in favour of the respondent for payment of the appreciation amount over and above the principal amount in case the petitioner failed to adhere to the terms of the agreement to sell dated 07.11.2016. It was submitted that in addition to the said personal guarantee, the petitioner had undertaken to attach the personal properties of himself and his wife with the respondent for the payment of the said amount(s). In furtherance of the same, it is submitted that the petitioner had issued cheques from his personal account.

6.4. It was submitted on behalf of the respondent that there was no multiplicity of proceedings with regard to the same transaction. It was submitted that the petitioner through his proprietorship firm as well as in his personal capacity as a



guarantor had issued multiple cheques at different points of time during the subsistence and after the dishonour of the agreement to sell.

6.5. It was submitted that the arbitration petition pending before the Coordinate Bench of this Court cannot be a bar to the remedy under Section 138 of the Act. It was submitted that the said arbitration petition filed by the respondent was also opposed by the petitioner on the ground of multiplicity of proceedings, however, the same was allowed *vide* order dated 14.05.2024 by a Coordinate Bench of this Court. It was pointed out that against the said order, an SLP bearing no. SLP (C) 13440/2024 was preferred by the petitioner before the Hon'ble Supreme Court and the same was dismissed *vide* order dated 11.07.2024.

6.6. Reliance was placed on the judgement of the Hon'ble Supreme Court in **Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) and Another**⁸ in paragraphs 10 to 13.

ANALYSIS AND FINDINGS

7. Heard learned counsel for the parties and perused the records.
8. The agreement to sell dated 07.11.2016 contains the following clauses:

“7a. That, in case the First Party is unable to get the Sale Deed of the said Commercial Unit(s) registered in favour of the second party till 30.09.2018, then the second party shall be entitled to the refund of full and final payment given against the said Commercial Unit(s). In such an eventuality, the First Party shall be liable to pay a compensation of Rs.15000/- (Rupees fifteen thousand only) per day after 30.09.2018 which will be over and above the Full and Final Payment amount.

⁸ 2022 SCC OnLine SC 513



7b. That the first party will also provide irrevocable Authority Letter in the name of Mr. Narinder Kumar Midha son of Late Sh. K. N. Midha R/o House No.53, 2nd Floor, Road No.42, West, Punjabi Bagh, New Delhi-110026, enabling him to execute the Power of Attorney, Sale Deed, Agreement to Sell, whichever is applicable and receive consideration/free transfer to third party for the said commercial units.

7c. That the first party also confirms for an appreciation amount of Rs.35,00,000/-(rupees thirty five lakh only) to the second party if first party will not be able to deliver the mentioned commercial units in schedule course of time and a post dated cheque No.057141 drawn on Central Bank of India, Ghaziabad dated 30.09.2018 issued to Second Party.”

(emphasis supplied)

9. As per ‘clause 7a’ of the agreement to sell, the petitioner, in case of his inability to get the sale deed registered of the aforesaid commercial units within the stipulated time, had agreed to pay a compensation amount of Rs. 15,000/- (Rupees fifteen thousands only) per day after 30.09.2018, over and above the full refund of the full and final payment given against the said units by the respondent. The cheques in the present petitions, i.e., cheque nos. 562629 and 000084 were issued on 28.02.2019 and 31.07.2019, respectively. It is pertinent to note that the said cheques were issued by the petitioner over and above the cheques for the principal amount of Rs. 1,72,21,200/- (Rupees one crore seventy two lakhs twenty one thousands and two hundred only) and the appreciation money of Rs. 35,00,000/- (Rupees thirty five lakhs only,) which is an admitted case of the respondent as well. It is not the case of the petitioner in the present petitions that the present cheques were handed over to the respondent at the time of execution of agreement to sell as a security, which were subsequently misused. The averment of the petitioner is that the said cheques were presented



illegally by the respondent after having received the entire amount already, which is a disputed question of fact.

10. The contention of learned Senior Counsel appearing on behalf of the petitioner regarding pendency of the arbitration proceedings being a bar in the prosecution under Section 138 of the Act is not tenable. It is a settled law that parallel proceedings, both civil and criminal, with respect to the same transaction can be proceeded with and the same would not amount to double jeopardy in any manner. So far as the repayment of Rs. 97,00,000/- (Rupees ninety seven lakhs only) is concerned, the same has to be established by the petitioner during the course of the trial.

11. It is also noted that the petitioner executed a personal guarantee dated 27.07.2018 with respect to the aforementioned agreement to sell. In these circumstances, presumption under Section 139 of the Act is against the petitioner and it is during the course of the trial, the latter needs to demonstrate that the cheques issued were not for any legally enforceable debt.

12. The Hon'ble Supreme Court in **Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) and Another**⁹ has observed and held as under:

“10. It is also relevant to bear in mind that the burden of proving that there is no existing debt or liability, is to be discharged in the trial. For a two judges Bench in *M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd.* (2002) 1 SCC 234, Justice S.N. Variava made the following pertinent observation on this aspect:—

⁹ 2022 SCC OnLine SC 513



“17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability.”

11. The legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The opinion of Justice K.G. Balakrishnan for a three judges Bench in *Rangappa v. Sri Mohan* (2010) 11 SCC 441 would at this stage, deserve our attention:—

“26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

12. At any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence. On this aspect, we may benefit by referring to the ratio in *Rajeshbhai Muljibhai Patel v. State of Gujarat* (2020) 3 SCC 794 where the following pertinent opinion was given by Justice R. Banumathi:—

“22. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138



of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act.”

13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.”

13. In view of the above facts and circumstances, no ground is made out for the Court to exercise its jurisdiction under Section 482 of the Cr.P.C. to quash the prosecutions emanating from the Complaint Case nos. 13508/2019 and 743/2020, at this stage.

14. Petitions stand dismissed and disposed of accordingly alongwith pending application(s), if any.

15. Copy of this judgment be communicated to the learned Trial Court for necessary information and compliance.



2025:DHC:2678



16. Judgment be uploaded on the website of this Court *forthwith*.

APRIL 17, 2025/sn

AMIT SHARMA, J.

Signature Not Verified

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Signing Date: 18.04.2025
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