



2025:DHC:2685



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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. 7912/2023, CRL.M.A. 29515/2023 (stay) & CRL.M.A.
8579/2024 (stay)

MR MANOJ GOYAL AND ANR.

.....Petitioners

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

SH SUMIT BANSAL

.....Respondent

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

+ CRL.M.C. 8002/2023 & CRL.M.A. 29845/2023 (Stay)

M/S MGI DEVELOPERS AND PROMOTERS AND ANRPetitioners

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

SH SUMIT BANSAL

....Respondent

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

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CRL.M.C. 8002/2023 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 follows:

- i) CRL.M.C. 7912/2023 is filed challenging and seeking to quash the Complaint Case no. 2823/2019 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 20.06.2019 emanating therefrom, pending before the learned Metropolitan Magistrate-03 (NW), Rohini, Delhi (hereinafter 'petition no. 1'); and
- ii) CRL. M.C. 8002/2023 is filed challenging and seeking to quash the Complaint Case no. 3298/2019 under Sections 138, 141 and 142 of the Act and the summoning and cognizance order dated 06.03.2019 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. 7912/2023 and CRL.M.C. 8002/2023 will be referred to as 'petitioner no. 1.' Petitioner- Ms. Kavita Rani Goyal in CRL. M.C. 7912/2023 and will be referred to as 'petitioner no. 2', and the petitioner- M/s MGI Developers and Promoters in CRL.M.C. 8002/2023 will be referred to as the 'petitioner firm.'



AVERMENTS IN THE COMPLAINT CASES

3. In petition no. 1, i.e., CRL.M.C. 7912/2023, the respondent herein filed a complaint dated 25.01.2019 against petitioner no. 1 and petitioner no. 2 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 person approached the complainant and introduced himself as the owner/proprietor of M/s MGI Developers & Promoters and further appraised him about their project “MGI MANSION” at Khasra no.966 & 967 Village- Noor Nagar, Tehsil and District Gaziabad U.P and expressed about need of money for their project and convinced the complainant to invest some money in their project by ensuring him good returns. They further Convinced to the Complainant that they have performed very well in their previous projects. They further offered personal guarantee for the money invested by the complainant and ensured guaranteed returns.

3. That believing on the assurances of the accused persons for repayment and considering their past performances as told by them, the 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 persons for investment in commercial units in the project.

4. That accused no.1 on behalf of their firm executed an Agreement to sell and other documents including receipt of money and personal guarantee on 07/11/2018 with complainant, regarding investment in commercial units situated in MGI Mansion, Khasra No. 966 & 967, Village Noor Nagar, Tehsil & District-Gaziabad, U.P. It was further agreed between the parties that if the accused persons would fail in executing Sale Deed of the abovesaid commercial units till 30/09/2018, then they would return the invested amount of the complainant in addition to appreciation amount of Rs.35,00,000/- (Rupees Thirty Five Lacs Only)

5. That the accused persons in order to win the confidence of the complainant, gave him personal guarantee that in case their firm would fail in executing the Sale Deed of the abovesaid commercial units till 30/09/2018 and also fails in



returning his money alongwith appreciation amount then they will issue him the cheques for the amount invested and appreciation amount from their personal bank account.

6. That when the accused persons could not execute the Sale Deed till 30/09/2018, in the terms of the Agreement to Sell, they in order to discharge their abovesaid liability towards complainant, issued two cheques from the bank account of their firm i.e. cheque bearing no.057140, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.057141, dated 30/09/2018 for Rs.35,00,000/-(Rupees Thirty Five Lacs Only) but they told the complainant that there are some financial constraints in his firm till first week of December, 2018 but they are issuing two cheques more cheques from their personal bank account towards the personal gurantee i.e. cheque bearing no.114256, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.114257, dated 30/09/2018 for Rs.35,00,000/-(Rupees Thirty Five Lacs Only) both drawn on Central Bank of India, Sehani Branch, Meerut Road, Gaziabad, U.P., in case the complainant wishes to withdraw his money prior to 15/12/2018 then he can use their personal cheques else after 15/12/2018 money would be realised from the cheques of the firm.

7. That in the terms of the Agreement to sell and discussion dated 30/09/2018, after consultation with accused no.1, the complainant presented aforesaid cheques on 05/12/2018 i.e. cheque bearing no.114256, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.114257, dated 30/09/2018 for Rs.35,00,000/-(Rupees Thirty Five Lacs Only) both drawn on Central Bank of India, Sehani Branch, Meerut Road, Gaziabad, U.P., through his banker i.e., ESAF Bank Ltd Sec.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 "Exceeds Arrangement". 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 06-12-2018. The accused was not maintaining sufficient balance in his said account on the date of presentation of the said cheque. On receiving back the said dishonoured cheques, the complainant intimated the fate of the cheques to the accused persons. At this the accused persons felt sorry and advised the



complainant to present the cheques of their firm and ensured him for honouring of those cheques.

8. That as per the advise of the accused persons and after consultation with them on 15/12/2018, the complainant presented the cheques of their firm, M/s MGI Promoters & Developers through his bank but those were also dishonoured on account of **"Exceeds Arrangement."**

9. That the said cheques have been issued by accused with ulterior motive and malafide 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 **"Exceeds Arrangement"**, 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 offence punishable under section 138, 141 and 142 of Negotiable Instrument Act as amended up-to-date.

10. That immediately on receiving back the said dishonoured cheques, the complainant served the requisite notice dated 20-12-2018 sent on 21-12-2018 to the accused persons through Speed Post informing them that their cheques as mentioned above has been received back dishonoured with the remarks **"Exceeds Arrangement"**. Further the accused persons 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 persons. The accused persons did not make the payment of the aforesaid cheques amount as demanded in the said notice.

11. That the accused persons 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.

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 cheques."



4. In petition no. 2, i.e., CRL. M.C. 8002/2023, the respondent herein filed a complaint dated 30.01.2019 against the petitioner firm and petitioner no. 1 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 & Promoters (i.e. Accused No.1) 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 by 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 performance as told by them, complainant arranged and gave Rs1,72,21,200/- (Rupees One Crore Seventy Two Lacs, Twenty One Thousand Two Hundred Only) in total i.e. his entire hard earned money, to the accused persons in commercial units of the accused persons.

4. That accused no.2 executed an Agreement to sell and other documents including receipt of money on 07/11/2018 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 document including Personal Guarantee of the accused no.2 and his wife Smt. Kavita Rani Goyal. It was further agreed between the parties that if the accused persons would fail in executing Sale Deed of the abovesaid commercial units till 30/09/2018, then accused person would return the invested amount of the complainant in addition to appreciation amount of Rs.35,00,000/- (Rupees Thirty Five Lacs Only).

5. That the accused no.2 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 i.e. accused no.1 would fail in executing the Sale Deed of the



abovesaid commercial units till 30/09/2018 and further fails in returning his money alongwith appreciation amount then would issue cheques for the amount invested and appreciation amount from their personal bank account.

6. That when the accused persons could not execute the Sale Deed till 30/09/2018, in the terms of the Agreement to Sell, they in order to discharge their abovesaid liability towards complainant, issued two cheques i.e. cheque bearing no. 057140, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.057141, dated 30/09/2018 for Rs.35,00,000/-(Rupees Thirty Five Lacs Only) both drawn on Central Bank of India, Sehani Branch, Meerut Road, Gaziabad, U.P., in favour of complainant to clear his part liability towards the complainant.

7. That in the 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. Sec.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 "**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 17-12-2018. The accused was not maintaining sufficient balance in his said account on the date of presentation of the said cheque. 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 malafide 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 "**Insufficient Balance**", 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 offence punishable under section 138, 141 and 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 21-12-2018 sent on 21-12-2018 to the accused through Speed Post informing the him that his cheques as



mentioned above has been received back dishonoured with the remarks "*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 PETITIONERS

5.1. Learned Senior Counsel appearing on behalf of the petitioners 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 petitioner



no. 1 *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 has filed 5 complaints against petitioner no. 1, 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 an existing liability. Thus, the case of the petitioners is that there was no liability existing at the time of presentation of the cheques.

¹ (2014) 12 SCC 539



Reliance is placed on paragraph 9 of the aforesaid judgement, which reads as under:

“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 petitioner no. 1, the respondent had invested an amount of Rs. 66,50,000/- (Rupees sixty-six lakhs and fifty thousands only), whereas petitioner no. 1 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 petitioners 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 petitioners 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 petitioners 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 petitioners 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

² (2010) 5 SCC 663

³ 1992 Supp (1) SCC 335



give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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. Learned Senior Counsel further argued that no specific averment has been made *qua* petitioner no. 1 in his capacity as the proprietor of the petitioner firm.

Reliance was placed on the judgement of the Hon’ble Supreme Court in **Ashok Mal Bafna vs. Upper India Steel Manufacturing and Engineering**



Company Limited⁴ in paragraphs 8 to 10, and 12 and 13. The said reads as under:

“8. Interpreting the provisions of Section 141 this Court in *National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal* [*National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] observed that Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the Company for the conduct of business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner the accused was in charge of or was responsible to the Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes especially where such statutes create vicarious liability.

9. To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of a defaulter Company, does not make him liable under the Act. Time and again, it has been asserted by this Court that only the person who was at the helm of affairs of the Company and in charge of and responsible for the conduct of the business *at the time of commission of an offence* will be liable for criminal action. (See *Pooja Ravinder Devidasani v. State of Maharashtra* [*Pooja Ravinder Devidasani v. State of Maharashtra*, (2014) 16 SCC 1 : (2015) 3 SCC (Civ) 384 : (2015) 3 SCC (Cri) 378 : AIR 2015 SC 675] .)

10. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

⁴ (2018) 14 SCC 202



12. Before summoning an accused under Section 138 of the Act, the Magistrate is expected to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. Impliedly, it is necessary for the courts to ensure strict compliance with the statutory requirements as well as settled principles of law before making a person vicariously liable.

13. The superior courts should maintain purity in the administration of justice and should not allow abuse of the process of court. Looking at the facts of the present case in the light of settled principles of law, we are of the view that this is a fit case for quashing the complaint. The High Court ought to have allowed the criminal miscellaneous application of the appellant because of the absence of clear particulars about the role of the appellant at the relevant time in the day-to-day affairs of the Company.”

5.6. Learned Senior Counsel with respect to petitioner no. 2 in CRL.M.C. 7912/2023 further submitted that the subject cheques which had been issued were from the joint account of the petitioners. Admittedly, the said cheques had not been signed by petitioner no. 2. It is also an admitted fact that petitioner no. 2 was neither a part of the agreement to sell nor related to the petitioner firm which had entered into an agreement to sell with the respondent. It is submitted that in the above circumstances, petitioner no. 2 has no role to play and could not have been prosecuted under Section 138 of the Act.

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

a) Meters and Instruments Private Limited and Another vs. Kanchan Mehta⁵

⁵ (2018) 1 SCC 560



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- b) **Vijay Gopala Lohar vs. Pandurang Ramchandra Ghorpade and Another⁶**
- c) **ING Vysya Bank Limited and Another vs. State of Rajasthan and Another⁷**
- 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)⁸**

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 petitioners before the learned Trial Court.

6.2. Learned counsel appearing on behalf of the respondent submitted that the averment made on behalf of petitioner no. 1 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 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

⁶ (2020) 14 SCC 806

⁷ (2015) 15 SCC 763

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was further submitted that petitioner no. 1 had not disputed the execution of 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 petitioners 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) has 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 petitioner no. 1 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 petitioners had deliberately concealed the fact that petitioner nos. 1 and 2 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 no. 1 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, petitioner no. 1 had undertaken to attach the personal properties of himself as well as of his wife (petitioner no. 2) with the respondent for the payment of the said amount(s). In furtherance of the same, it is submitted that petitioner no. 1 had issued post-dated cheques from his personal account towards the refund of the principal amount and payment of the appreciation amount.



6.4. Learned counsel for the respondent submitted that with respect to the contention of petitioner no. 1 regarding lack of specific averments made in the Complaint Case no. 3928/2019 (subject-matter of petition no. 2) concerning petitioner no. 1, it was pointed out that the cheques in question had been issued on behalf of the petitioner firm, whose sole proprietor was the petitioner no. 1. It was submitted that the proprietorship concern is not a separate legal entity and cannot be distinguished from its proprietor.

6.5. 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 petitioner no. 1 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.

6.6. 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 petitioner no.1 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 petitioner no. 1 before the Hon'ble Supreme Court and the same was dismissed *vide* order dated 11.07.2024.



6.7. 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**⁹ in paragraphs 10 to 13.

ANALYSIS AND FINDINGS

7. Heard learned counsel for the parties and perused the records.

8. From the facts of the present case, as culled out from the averments made in the complaints as pointed out hereinabove, the respondent was already in possession of the two cheques, viz., bearing nos. 057140 dated 30.09.2018 for Rs. 1,72,21,200/- and 057141 dated 30.09.2018 for Rs. 35,00,000/- issued by petitioner no. 1 from the petitioner firm (subject matter of CRL. M.C. 8002/2023.) It is the case of the respondent that the petitioners told him that there were some financial constraints in the petitioner firm till the first week of December, 2018 and in view of the same, they were issuing two more cheques from their personal bank account towards the personal guarantee, i.e., cheque bearing no. 114256 dated 30.09.2018 for Rs. 1,72,21,200/- and another cheque bearing no. 114257 dated 30.09.2018 for Rs. 35,00,000/- (subject-matter of CRL. M.C. 7912/2023) and in case the respondent wished to withdraw his money prior to 15.12.2018, he could use their personal guarantee cheques, else after 15.12.2018, the money could be realised by the respondent from the cheques of the petitioner firm.

⁹ 2022 SCC OnLine SC 513



9. It is pertinent to note that the respondent chose to deposit for encashment the two cheques which had been issued by petitioner no. 1 from his personal joint bank account with petitioner no. 2 without waiting to deposit for encashment the other two cheques issued by petitioner no. 1 on behalf of the petitioner firm. The cheques issued by petitioner no. 1 from his personal joint account with his wife, i.e., petitioner no. 2 were submitted by the respondent for encashment on 05.12.2018 and on presentation, the same got dishonoured and the cheques alongwith the return memos were thereafter sent to the respondent by the banker of the petitioner nos. 1 and 2 on 06.12.2018. It is stated in the averments as pointed hereinabove that when the petitioners were apprised about bouncing of the said personal guarantee cheques, they felt sorry and advised the respondent to present the cheques of the petitioner firm and ensured him of honouring of those cheques. The averment is made in the following manner in the Complaint Case no. 2823/2019 (subject-matter of CRL. M.C. 7912/2023) by the respondent:

“6. That when the accused persons could not execute the Sale Deed till 30/09/2018, in the terms of the Agreement to Sell, they in order to discharge their abovesaid liability towards complainant, issued two cheques from the bank account of their firm i.e. cheque bearing no.057140, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.057141, dated 30/09/2018 for Rs.35,00,000/- (Rupees Thirty Five Lacs Only) **but they told the complainant that there are some financial constraints in his firm till first week of December, 2018 but they are issuing two cheques more cheques from their personal bank account towards the personal gurantee i.e. cheque bearing no.114256, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.114257, dated 30/09/2018 for Rs.35,00,000/- (Rupees Thirty Five Lacs Only) both drawn on Central Bank**



of India, Sehani Branch, Meerut Road, Gaziabad, U.P., in case the complainant wishes to withdraw his money prior to 15/12/2018 then he can use their personal cheques else after 15/12/2018 money would be realised from the cheques of the firm.

7. That in the terms of the Agreement to sell and discussion dated 30/09/2018, after consultation with accused no.1, the complainant presented aforesaid cheques on 05/12/2018 i.e. cheque bearing no.114256, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.114257, dated 30/09/2018 for Rs.35,00,000/- (Rupees Thirty Five Lacs Only) both drawn on Central Bank of India, Sehani Branch, Meerut Road, Gaziabad, U.P, through his banker i.e., ESAF Bank Ltd Sec.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 "Exceeds Arrangement". 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 06-12-2018. The accused was not maintaining sufficient balance in his said account on the date of presentation of the said cheque. **On receiving back the said dishonoured cheques, the complainant intimated the fate of the cheques to the accused persons. At this the accused persons felt sorry and advised the complainant to present the cheques of their firm and ensured him for honouring of those cheques.**"

(emphasis supplied)

However, in respect to Complaint Case no. 3298/2019, which is the subject-matter of CRL.M.C. 8002/2023, the averments with respect to the subject cheques as pointed hereinabove does not mention anything about the presentation of the cheques issued by petitioner no. 1 in terms of his personal guarantee to the respondent. It is noted that the cheques issued by petitioner no. 1 from his personal bank account were returned to the respondent by the bank of the petitioners on 06.12.2018 and the complaint was filed before the learned Metropolitan Magistrate on 25.01.2019. Further, with respect of cheques issued



by petitioner no. 1 on behalf of the petitioner firm, the same were returned alongwith the memos by the bank on 17.12.2018 and complaint with respect to the same was filed on 30.01.2019. Despite the fact that the complaint with respect to the cheques issued by petitioner no. 1 on behalf of the petitioner firm was filed later, there was no mention in the said complaint of the cheques issued by petitioner no. 1 from his personal bank account and their dishonour. The relevant portion of the complaint is as under:

“5. That the accused no.2 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 i.e. accused no.1 would fail in executing the Sale Deed of the abovesaid commercial units till 30/09/2018 and further fails in returning his money alongwith appreciation amount then would issue cheques for the amount invested and appreciation amount from their personal bank account.

6. That when the accused persons could not execute the Sale Deed till 30/09/2018, in the terms of the Agreement to Sell, they in order to discharge their abovesaid liability towards complainant, issued two cheques i.e. cheque bearing no. 057140, dated 30-09-2018 for Rs.1,72,21,200/- (Rupees One Crore Seventy Two Lacs Twenty One Thousand Two Hundred Only) and a cheque no.057141, dated 30/09/2018 for Rs.35,00,000/-(Rupees Thirty Five Lacs Only) both drawn on Central Bank of India, Sehani Branch, Meerut Road, Gaziabad, U.P, in favour of complainant to clear his part liability towards the complainant.”

10. As pointed hereinabove, it is the case of the respondent himself in CRL.M.C. 7912/2023 that the cheques issued from the personal bank account of petitioner no. 1 (jointly held by petitioner nos. 1 and 2) were given as an option to the respondent in case he wanted the money to be credited in his account before the date as stated in the said complaint, i.e., 15.12.2018. In essence therefore, the cheques issued by petitioner no. 1 from his personal bank account



were in lieu of the cheques issued by petitioner no. 1 from the bank account of the petitioner firm. In these circumstances the cheques issued by petitioner no. 1 on behalf of the petitioner firm in the first instance should either have been returned by the respondent and in any case, ought not to have been presented. There is absolutely no disclosure on behalf of the respondent in the complaint filed subsequently with respect to the cheques issued by petitioner no. 1 on behalf of the petitioner firm, i.e., in Complaint Case no. 3298/2019 (subject-matter of CRL. M.C. 8002/2023) with regard to the cheques already issued by petitioner no. 1 from his personal bank account. In view of the averments made in the complaints, there cannot be in any manner, doubt left that the respondent exercised his option to present the cheques issued from the personal bank account of the petitioner towards the personal guarantee for discharge of the liability. In these circumstances, the respondent cannot be permitted to present the other set of cheques issued from the bank account of the petitioner firm again for the same transaction. In these circumstances, in the considered opinion of this Court, continuance of proceedings in Criminal Complaint no. 3298/2019 (subject matter of CRL.M.C. 8002/2023) would be an abuse of process of law and therefore, in the interest of justice, exercise of powers under Section 482 of the Cr.P.C. by this Court is warranted in the present case.

11. So far as the liability of petitioner no. 1 with respect to the cheques issued from his personal bank account, i.e., cheque nos. 114256 and 114257 dated 30.09.2018 (subject matter of CRL.M.C. 7912/2023,) the same would be covered by Section 139 of the Act, which reads as under:



“139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

The contention on behalf of the learned Senior Counsel for petitioner no. 1 with respect to the payment made to the respondent is a disputed question of fact and this Court in the present jurisdiction cannot decide the same.

12. The Hon’ble Supreme Court in *Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) and Another*¹⁰ 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:—

“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:—

¹⁰ 2022 SCC OnLine SC 513



“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. However, petitioner no. 2 has been arrayed as an accused in the complaint case no. 2823/2019 (subject-matter of CRL. M.C. 7912/2023) in the capacity of being a joint holder of the bank account with petitioner no. 1. Admittedly, petitioner no. 2 is not a signatory to those subject cheques. The vicarious liability in terms of the Section 141 of the Act, reads as under:

“141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and 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 accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —



(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

It is pertinent to note that petitioner no. 2 was neither a part of the proprietorship firm which entered into the agreement to sell nor a party to any of the proceedings; and was also not a signatory on the document of guarantee executed by petitioner no.1. The said document for sake of completeness is reproduced as under:

“

PERSONAL GUARANTEE

I, Manoj Kumar Goyal S/o Late Sh. Satish Chand R/o Mata Wali Gali, Dankaur, Gautam Budh Nagar hereby confirm and declare that notwithstanding anything herein contained and have agreed irrevocable personal guarantee in case M/s. MGI Developers & Promoters fails to comply the terms and conditions agreed in the agreement dated **07-11-2016** between M/s. MGI Developers & Promoters And **Mr. Sumit Bansal S/o shri K. L. Bansal R/o 131, Pocket-G-4, Sector-11, Rohini, Delhi-110085** for the maturity amount of **Rs. 2,07,21,200/- (Rupees Two Crore Seven Lacs Twenty One Thousand Two Hundred Only)** If the M/s. MGI Developers & Promoters fails to comply any condition as agreed in **STAMP PAPER NO. DL131037**, I and my successors shall be considered as principal Debtor to **Mr. Sumit Bansal** to the extent of amount mentioned above, in respect of advances made and of all the facilities granted by the Company.

In respect of the above attachment of me and my wife personal property will be attached with **Mr. Sumit Bansal** for payment of the above said amount and I am also providing the postdated cheques of my personal account if the details of the same is as below. The Cheque given by me will be honoured on presentation in all aspects.

CHEQUE NO	DATE	AMOUNT	FAVOURING
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114256	30-09-2018	17221200/-	Sumit Bansal
114257	30-09-2018	3500000/-	Sumit Bansal

DEPONENT

VERIFICATION

Verified at Noida on dated 27th July, 2018 that the contents of the above are true and correct to my knowledge and belief and no part of it, is false and nothing material, has been concealed there from.

DEPONENT”

14. In these circumstances, petitioner no. 2 cannot be prosecuted for the offence punishable under Section 138 of the Act. She cannot be held liable for dishonour of the cheques as the same were not issued by her in discharge of any legal liability or debt. Similarly, she cannot be held vicariously liable on the ground of being a joint holder of the account with petitioner no. 1, from which the subject cheques towards personal guarantee were issued.

15. The Hon’ble Supreme Court while determining the liability of the joint-account holders under Section 138 of the Act in **Aparna A. Shah vs. Sheth Developers Private Limited and Another**¹¹, has observed and held as under:

“27. In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains the name of the appellant and her husband, the

¹¹ (2013) 8 SCC 71



fact remains that her husband alone had put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28. We also hold that under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder. The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case “except in case of Section 141 of the NI Act” be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.”

16. In view of the above discussion, this Court holds as under:

CRL.M.C. 7912/2023

- a) The petition is partly allowed *qua* petitioner no. 2- Ms. Kavita Rani Goyal.
- b) The Complaint Case no. 2823/2019 and the impugned order dated 20.06.2019 are quashed *qua* petitioner no. 2.



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c) Complaint Case no. 2823/2019 shall continue in accordance with law with respect to petitioner no. 1.

CRL.M.C. 8002/2023

a) The petition is allowed. The Complaint Case no. 3298/2019 and the impugned order dated 06.03.2019 are hereby quashed.

17. Petitions stand disposed of accordingly alongwith pending application(s), if any.

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

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

AMIT SHARMA, J.

APRIL 17, 2025/sn