$~62

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

\+ CRL.M.C. 4755/2025 and CRL.M.A. 20624/2025

MS VN PETHE BROTHERS & ANR. .....Petitioners

Through: Mr. Vinay Kumar Dubey, Mr. Vishal Kumar Malhotra and Ms. Priya, Advocates.

versus

STATE NCT OF DELHI & ANR. .....Respondents

Through: Mr. Digam Singh Dagar, APP for the State.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

O R D E R

% **24.07.2025**

1. Quashing of a Complaint filed under section 138 of the NI Act bearing no. 8135 of 2024, titled "Swal Corporation Limited vs. M/s V N Pethe Brothers through its Partnership", pending before the Ld. Judicial Magistrate First Class (NI Act) -04, Patiala House Courts, New Delhi and all proceedings arising therefrom is sought herein. Prayer also is to quash the summoning order.

2. Succinctly speaking, case set up in the petition herein is that the petitioners entered into a dealership agreement with Respondent No. 2 in June 2015 for distributing products in Ratnagiri, Maharashtra. In January 2016, the petitioners handed over three signed blank cheques to Respondent No. 2, which were acknowledged. The petitioners made regular payments

and later informed Respondent No. 2 in October 2017 that the bank account linked to those cheques had been officially closed, and requested return of the cheques.

2.1. In March 2018, the petitioners returned the products due to quality and quantity issues. Despite being informed of the closed account, Respondent No. 2 unilaterally filled in one of the blank cheques for ₹45,11,069.82 and deposited it. The cheque was dishonoured with the remark "account closed." A legal notice followed, to which the petitioners responded, denying all claims and alleging misuse of the cheque.

2.2. Respondent No. 2 then filed Complaint Case No. 213/2019, which was later withdrawn without liberty to refile. During the proceedings, it was confirmed that the goods had been returned and that Respondent No. 2 was aware of the account closure.

2.3. Subsequently, Respondent No. 2 misused another blank cheque for the same time-barred claim and again deposited it, which was dishonoured for the same reason. A second complaint (Case No. 8135/2024) was filed, despite concealment of crucial facts, including the prior case and knowledge of the account closure. By misrepresenting facts, Respondent No. 2 obtained a summoning order, which is now under legal challenge.

3. In the aforesaid backdrop, I have heard the learned counsels and have perused the case file.

4. Learned counsel for the petitioners argues that Deliberately concealing material facts—including knowledge of the closed account, the time-barred nature of the alleged debt, non-existence of a legally enforceable liability, and the earlier filing and withdrawal of CT Case No. 213/2019—Respondent No. 2 committed a fraud upon the Court by instituting

Complaint Case No. 8135/2024 before the Learned JMFC (NI Act)-04, Patiala House Courts, New Delhi.

4.1. By suppressing these material facts and grossly misrepresenting the circumstances, Respondent No. 2 misled the Court and obtained a summoning order against the petitioners.

4.2. He would also argue that there was no written agreement between the parties for extension of the time limit for payment of any alleged dues after the expiry of the limitation period. Because the cheque in question in the second complaint was admittedly obtained by Respondent No. 2 during the course of a Dealership Agreement dated June 22, 2015, and it was never returned despite a formal request vide letter dated October 30, 2017, in which the Petitioners informed Respondent No. 2 about the closure of the account.

5. Having heard, in sum and substance, the defense of the petitioners is that the cheque is time barred as the debt which is sought to be enforced was beyond a period of three years. Apart therefrom there is no legally enforceable debt and the second complaint filed against after withdrawing the first is per se not maintainable.

6. It is settled law that limitation being mixed question of fact and law, the same cannot be a ground of quashing and it can only be best determined after adducing evidence in accordance with law in course of the pending trial. Thus, the plea that the cheque relates to a time-barred debt is a triable issue and cannot be conclusively determined at the stage of summoning or entertained under the instant petition for quashing.

7. Qua other arguments and grounds taken in petition, pertinent it is to note that as per Section 139 of the Negotiable Instruments Act, 1881 there is

a statutory presumption that a cheque has been issued in discharge of a debt or other liability. The burden to rebut this presumption lies squarely on the accused (petitioners). Until rebutted by cogent evidence, the presumption operates in favour of the complainant (Respondent No. 2). In this case, the petitioners handed over signed cheques voluntarily, and the cheque was dishonoured upon presentation, thus validly triggering a cause of action under section 138, ibid.

8. Furthermore, the withdrawal of the earlier complaint (Case No. 213/2019) does not operate as res judicata or bar the filing of a fresh complaint qua another cheque. Provided, of course, as long as the cheque in question was presented within its validity and a valid legal notice was issued and not complied with, the complaint is maintainable.

9. The fact that the cheque was dishonoured due to account closure, while the cheque was still with Respondent No. 2, may also be interpreted either way, it could be an act of dishonest intention by the petitioners to defeat their liability or a genuine defense but same is again matter of trial.

10. There are thus no grounds to interfere with the impugned order dated 07.08.2024 or otherwise to quash the complaint under challenge herein.

11. Petition is, accordingly, dismissed.

ARUN MONGA, J

JULY 24, 2025
kd