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

+ CRL.M.C. 7393/2025, CRL.M.A. 31012/2025, CRL.M.A.
31013/2025, CRL.M.A. 31014/2025

M/S ABIDI ENTERPRISES THROUGH PARTNER SYED
MAHMOOD AKHTAR

.....Petitioner

Through: Mr. Shashank Harshit Singh and
Mr. Ashwani Gehlot, Advocates.

versus

NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Hemant Mehla, APP for State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **16.10.2025**

1. This petition, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, assails the Trial Court's summoning order dated 26th July, 2022 in CC No. 310/2022, and seeks quashing of the complaint proceedings instituted by Respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881.²

2. The complaint arises from the dishonour of a cheque issued by the Petitioner contemporaneously with the execution of an agreement with Respondent No. 2/Complainant in respect of a loan of INR 37,00,000/-. The Petitioner contends that the cheque was not issued in discharge of any subsisting liability but merely as *security*. It is further submitted that the cheque was presented with *mala fide* intent, despite there being no

¹ "BNSS"

² "NI Act"



enforceable debt or liability. Reliance is placed on a recovery notice issued by Union Bank of India to contend that since the Complainant has already sought recovery from the bank, the present proceedings under Section 138 of NI Act are unjustified. Petitioner further relies on the terms of a letter dated 20th December 2013, acknowledged by the bank on 20th January 2014, which instructed the bank not to release the borrower's securities without first refunding the amount to the Venture Capital Account³. He argues that the bank breached this condition and is solely liable to refund the VCA and compensate for other losses, as it continues to hold the assets of Golden Cold Storage, the Petitioner's unit.

3. Having considered the submissions, this Court finds no ground to invoke its inherent jurisdiction under Section 528 of BNSS. The plea that the cheque was issued merely as security, that no legally enforceable debt subsisted, or that the Complainant or the bank breached the underlying agreement, raises disputed questions of fact that can only be examined at trial. These are matters for evidence and cannot be adjudicated at the threshold. At this stage, when the issuance and dishonour of the cheque are undisputed, no opinion can be expressed on such factual defences in these proceedings.

4. The mere assertion that the cheque was issued as security or that there was no subsisting liability cannot, by itself, justify quashing proceedings under Section 138 of the NI Act.⁴ Once execution of the cheque is admitted, the presumptions under Sections 118(a) and 139 of the NI Act get triggered

³ "VCA"

⁴ *HMT Watches Ltd. v. M.A. Abida & Anr.* (2015) 11 SCC 776; *Rathish Babu Unnikrishnan v. State (NCT of Delhi) & Anr.* (2022) 20 SCC 661.



in favour of the Complainant. The burden to rebut the same lies on the accused and must be discharged through cogent evidence during trial. The pendency of any civil or contractual proceedings, or disputes before financial institutions, does not dilute the criminal liability arising from dishonour of a cheque.

5. The jurisdiction under Section 528 BNSS is intended to prevent abuse of process or secure the ends of justice, not to pre-empt the trial or evaluate defences on merits. At this stage, the Court cannot engage in assessing disputed facts or weighing competing versions of events. These proceedings are not intended to resolve factual controversies or to conclusively vindicate either party. The complaint, *prima facie*, satisfies the statutory ingredients of the offence under Section 138 of NI Act viz issuance of the cheque, its presentation within validity, dishonour, service of notice, and failure to pay within the prescribed period. No exceptional circumstance has been demonstrated to warrant interference.

6. Accordingly, the petition is dismissed, along with all pending applications. It is clarified that this Court has not expressed any opinion on the merits of the parties' respective claims, which shall be adjudicated by the Trial Court in accordance with law.

SANJEEV NARULA, J

OCTOBER 16, 2025

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