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

% ***Date of decision: 8th April, 2025***

+ **CRL.M.C. 1854/2018 & CRL.M.A. 6636/2018**

NITIN BHAYANA

S/o Mr. Suresh Bhayana
Having office at,
7, Factory Road, Near Safdarjung Hospital,
New Delhi-110029

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Vivek Suri and Ms. Kajal,
Advocates.

Versus

1. **STATE (NCT OF DELHI)**
NCT of Delhi

.....Respondent No.1.

2. **AKASH DEEP SINGH**
S/o Sh. Brij Mohan Singh
R/o C-501, Beta-1,
Greater Noida, U.P.

.....Respondent No.2.

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.
Mr. Ajayinder Sangwan, Mr. Arun
Rathi, Mr. H.S. Singh, Mr.
Summinder Paswan, Mr. Pradeep K.
Sharma, Mr. Smit Singh Kuru and
Mr. Tejasvi Kumar Sharma,
Advocates for R-2.

CORAM:



HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Present Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioner Nitin Bhayana seeking quashing of Order dated 02.08.2017 whereby he has been summoned under Sections 342/384/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) by the learned Metropolitan Magistrate in Criminal Complaint No. 698/17, under Section 200 Cr.P.C filed by Respondent No.2/Complainant.
2. ***Briefly stated***, Complaint Case No.698/2017 was filed by Respondent No.2/Akashdeep Singh, wherein he asserted that he was working as Project Manager with the Petitioner's Company i.e. Bhayana Builder's Private Limited, since the year 2006. During the course of his employment, he had approached the Petitioner Company on 25.05.2011 seeking House Building Loan advance of Rs.8 lakhs, which was disbursed to him. He, in turn, gave ten cheques to the Petitioner Company towards the repayment of this amount.
3. The Petitioner has asserted that consequent to the alleged professional misconduct and irregularities committed by Respondent No.2, a Suspension Letter dated 05.03.2012 was issued to him by the Petitioner's Company. Further, as a precautionary measure on the same day Loan Agreement dated 05.03.2012 was got executed by the Petitioner Company from him.



4. The Respondent No.2 with the *mala fide* intention to avoid repayment of the loan amount, filed a Complaint dated 07.03.2012 *vide* DD No.58B at Police Station Safdarjung Enclave, based on concocted story. He falsely alleged that on 05.03.2012, Petitioner along with one Gaurav Suri, came to the Project Site at 11:30 A.M and at 02:30 P.M asked him to attend their Head Office. Upon reaching their office, he found the Petitioner seated in the room of Respondent No. 2, whereafter at about 06:45 P.M, the Petitioner and Gaurav Suri, Vipin Soin and Sunil Suri came with two papers, one being his Suspension Letter and other being a Stamp Paper with “*Advance for Home Loan*” typed on it. They forcefully made Respondent No.2 sign those papers.

5. The allegations were also levelled against one Mr. Aggarwal, his Superior at the Project Site, of submitting a false Report qua Respondent No.2 upon his refusal to obey his certain directions.

6. The petitioner has further stated that the service of Respondent No.2 was terminated *vide* Letter dated 09.03.2012 and he was given seven days to clear the Home Loan Advance, failing which the Company intended to present the cheques for encashment to realize the outstanding amount. The Respondent No.2 failed to make any payment and the cheques were deposited by the Petitioner’s Company for realization of the loan amount. However, the cheques on presentation were dishonoured for ‘*insufficiency of funds*’. Complaints under Section 138 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as “NI Act”*) were filed against Respondent No.2 qua the ten cheques.



7. As a counter-blast to the Complaints under Section 138 NI Act, Respondent No.2 after a delay of almost 2 years, filed the present Criminal Complaint under Section 200 Cr.P.C along with Application under Section 156(3) Cr.P.C for registration of FIR. The Action Take Report was submitted by the Police whereof after considering the material available on record, the Application under Section 156(3) Cr. P.C was rejected.
8. The pre-summoning evidence was recorded and *vide* detailed Order dated 11.05.2015 *the learned M.M. dismissed the Complaint.*
9. Aggrieved by the Order of dismissal dated 11.05.2015, Respondent No. 2 filed a Revision Petition before the learned Sessions Court. *Vide* Order dated 28.01.2017, *the learned Sessions' Court remanded back the case* to the Court of learned Magistrate for fresh consideration on the point of summoning, along with specific directions to also consider the issue of *territorial jurisdiction.*
10. *The learned Metropolitan Magistrate vide Order dated 02.08.2017 took cognizance of the offences under Sections 342/384 read with Section 34 IPC and directed issuance of summons to all the accused persons, including the Petitioner herein, which is under challenge in the present Petition.*
11. ***The grounds on which the impugned summoning Order dated 02.08.2017*** has been challenged by the Petitioner is that no *prima facie* case is made out against the Petitioner on the basis of pre-summoning evidence. It is submitted that the Complaint filed by Respondent No.2 is counter blast to the criminal complaint under Section 138 NI Act filed by the Petitioner



against him with a fraudulent intent to avoid repayment of the outstanding loan amount.

12. It is further submitted that the Complainant has failed to establish that he was put in fear of any injury or was dishonestly induced under fear to deliver any property or any valuable security. Respondent No.2 has himself admitted in his Complaint that he had handed over 10 cheques bearing Nos. 008645 to 008654 to the Petitioner's company. It is submitted that the ingredients of wrongful confinement and extortion, as alleged by Respondent No.2, are not established.

13. Moreover, he has himself responded to the alleged instructions of the accused persons and had wilfully chosen to visit and remain at the office of the Petitioner till 06.45 P.M. which further goes to show that no allegation whatsoever has been made by Respondent No.2 depicting any restraint in any manner and preventing him from proceeding out of the said office.

14. It is further asserted that the alleged offence was not committed within the jurisdiction of this Court and the Complaint could not have been filed in Delhi.

15. Furthermore, while taking cognizance no reasons have been given what factors weighed in the complaint and this Complaint is nothing but an arm twisting tactic to make the Petitioner succumb to the Complaint.

16. Reliance has been placed on Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749 wherein it was observed that the Magistrate must scrutinize the evidence and may even himself put question to the Complainant and his witnesses to find out the truthfulness of the allegations



or otherwise and whether any *prima facie* offence has been committed or not by the accused persons. It is, therefore, submitted that the impugned Order suffers from patent illegality and deserves to be set aside.

17. ***In the Counter Affidavit filed by the Respondent No. 2/Complainant,*** it has been stated that there is sufficient material on record duly supported by the testimony of CW-2 & CW-3, which makes out a *prima facie* case of the alleged offences against the Petitioner.

18. The Respondent No. 2 relies on the judgements of the Hon'ble Apex Court in Sonu Gupta vs. Deepak Gupta, (2015) 3 SCC 424, State of Haryana vs. Bhajan Lal, 1992 Supp (1) 335 to supplement the arguments on the requirements at the stage of cognizance and summoning and the guidelines to quash an F.I.R. respectively.

19. *Respondent No. 2/Complainant* has asserted that the Petitioner had assured the Complainant that after the completion of the Project assigned to Complainant, an incentive of 4% of the enhanced cost, would be given to him. Accordingly, an incentive of Rs. 8 lakhs was given to the Respondent No. 2/Complainant on 25.05.2011 and another Rs. 4 lakhs remained to be paid. The Complainant that this sum of money was rightfully owed to him by the Petitioner's Company, as incentive payable to the Complainant and denied it to be the Home Loan.

20. The Respondent no.2/Complainant has further submitted that he was forced to sign on Suspension Letter dated 05.03.2012 along with a Stamp Paper relating to advance for *Home Loan*. Moreover, on the same date, the Petitioner and his Associates forcefully obtained 10 signed cheques, which



was witnessed by CW-2 & CW-3, Contractors of the Company, whose testimony has been recorded.

21. Further, Respondent No. 2/Complainant filed a Complaint dated 07.03.2012 at P.S. Safdarjung Enclave, but the Police did not take any action against the accused persons. The Respondent No.2 then filed this Complaint under Section 200 of Cr.P.C. wherein ultimately the Petitioner has been summoned under Section 204 Cr.P.C. *vide* order dated 02.08.2017.

22. It is asserted that the Petition challenging the summoning Order, is without merit and is liable to be dismissed.

23. ***In the Rejoinder to the Reply filed by the Respondent No. 2/Complainant***, the Petitioner has unequivocally submitted that the Criminal Complaint in question has been filed fraudulently with the intention to avoid repayment of the outstanding loan amount. Moreover, two Civil Suits were filed by the Respondent No. 2/Complainant, wherein contradictory stand have been taken by the Respondent No. 2/Complainant to that taken in the Criminal Complaint.

24. Respondent No. 2 filed a *Civil Suit no. 9321/2016 for Declaration and Annulment of the Loan Agreement dated 05.03.2012 and the 10 cheques bearing nos. 008645 to 008654*, on the averments that the Loan Agreement dated 05.03.2012 and the 10 issued cheques were obtained by force, threat or coercion as alleged in the Criminal Complaint. *This Suit has been dismissed by the Ld. Trial Court as barred by Limitation.*

25. Also, another *Civil Suit no. 6991/2016* was filed by Respondent No. 2 against the Petitioner-Company for recovery of Rs. 17,50,000/- with interest



@ 14% per annum, wherein the Sessions Court observed the contradictions in the statements of the Plaintiff (Respondent No. 2 herein) at different stages and concluded that he was not presenting correct facts; also that he failed to explain the manner in which he was coerced. The Suit was dismissed *vide* Judgement dated 02.07.2019.

26. It is thus, contended that the impugned Order is erroneous and liable to be set aside.

27. **Submissions heard and record perused.**

28. ***The first aspect for consideration is whether the Complaint within the territorial jurisdiction of this Court.***

29. In this regard, **Section 179 Cr.P.C.** is produced as under:

Offence triable, where act is done or consequence ensues.

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

30. Section 179 Cr.P.C. is very specific in stating that only such Courts have the territorial jurisdiction where an act of offence due to something is done or consequence ensues. It states that the Court in whose jurisdiction any part of or any act of offence has been committed, would have the territorial jurisdiction. Therefore, for territorial jurisdiction of Delhi Court to be invoked, the offence and its consequence must have happened partly or wholly, within the local jurisdiction of the Court.

31. The Petitioner in Paragraph No.3 of the Complaint has himself mentioned that on the date of the alleged incident i.e. 05.03.2012, the



Petitioner along with others, directed him to come to the personal office of the Petitioner and when he reached there at about 06:45 PM, he was made to sign some blank cheques and some plain papers at Noida and threatened by the Petitioner/Nitin Bhayana along with Gaurav Suri, Vipin Soni and Sunil Suri while having been detained in the office of the Petitioner, that they will kidnap and kill him and stated that ***“this is Noida not Delhi”***.

32. From this averment in the Complaint, it is evident that the entire incident of 05.03.2025 took place when the Complaint was present in the Office of the Petitioner in Noida. There is no whisper about anything happening in Delhi.

33. Respondent No.2 has argued that the incident may have happened in the office of the Petitioner at Noida, but the Main office of the Petitioner’s Company was also at Okhla, New Delhi, and therefore, it cannot be said that the offence was not committed in Delhi. It was also asserted that the Complainant is resident of New Delhi and therefore, this Court has jurisdiction to entertain this Petition.

34. It has been rightly argued on behalf of the Petitioner that the entire offence took place on 05.03.2012 in Noida and the *Courts at Delhi would have no territorial jurisdiction to entertain the present Petition and the Petition is liable to be dismissed on this count itself.*

35. ***The next aspect for consideration is whether the Complaint discloses commission of any offence.***

36. The first averment made by the Complaint was that he had been wrongfully restrained in the office of the Petitioner. However, his own



submission is that he was the employee of the Company and he had been told by the Petitioner and other officials to meet them, where he himself went. There is nothing on record to show that he was kidnapped or wrongfully restrained. **No offence under Section 342 IPC is made out.**

37. Further averment made by the Complainant is that he was forcibly made to give ten signed blank cheques and also sign on some blank papers. It is pertinent to note that Complainant himself has stated in his Complaint that the Company was happy with his work and on his request, the Company had granted him housing loan of Rs.8 Lacs and in lieu of it, he had given ten blank cheques and he was assured that once the said amount is repaid, the cheques would be returned.

38. Furthermore, the Complainant filed a Suit for Recovery of Rs.17,50,000/- along with interest @14% per annum as due for his salary and other benefits, which was eventually dismissed *vide* Judgment dated 02.07.2019. In the said Suit, it was observed that the Loan Agreement dated 05.03.2012, admittedly had signatures of the Complainant, but the Complainant suppressed the admission that he had earlier taken a Home Loan of Rs.8 Lacs.

39. It is quite evident from the aforementioned averments made by the Complainant that he had been given a loan of Rs.8 Lacs by Petitioner's Company, but because he was put under suspension on 05.03.2012, the Company made him to sign the Loan Agreement dated 05.03.2012 and also took ten cheques towards the repayment of Home Loan. On the earlier occasion, Company may have assured that Respondent No.2 that he may



make payments in future or that the money would be adjusted (towards future incentives that he may earn) but once he was put under suspension, the Petitioner Company resorted to the secure its own amount. Therefore, Respondent No.2 was asked to sign the Loan Agreement dated 05.03.2012 and he also gave blank cheques. ***There is nothing on record to show offence of coercion or extortion under Section 384 IPC is prima facie made out.***

Conclusion:

40. The entire averments made in the Complaint even if admitted, do not *prima facie* make out any offence under Section 342/384 IPC. The learned M.M. has directed issuance of summons against the Petitioner without even making any averment or reference to the aspect of territorial jurisdiction, despite the matter having been remanded back by the Revisional Court to consider the issue of territorial jurisdiction.

41. It is therefore held that the Complaint does not disclose any *prima facie* offence to have been committed by the Petitioner. It also shows that this Court in Delhi does not have the territorial jurisdiction as no part of the offence was committed in Delhi.

42. The impugned summoning Order dated 02.08.2017 is hereby, set aside and the Petitioner stands discharged accordingly.

43. The present Petition and pending Application (s) are accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

2025:DHC:3690



APRIL 8, 2025

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