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

+ **CRL.L.P. 462/2016 & CRL.M.A. 13594/2016**

UCO BANK

.....Petitioner

Through: Mr. Rajesh Rattan, Advocate.

versus

M/S SURYAVINAYK INDUSTRIES LTD & ORSRespondents

Through: Mr. Vijay Aggarwal, Mr. Yash Agrawal, Mr. Rachit Bansal, Mr. Pankush Goyal, Mr. Ketan Kumar Roy and Mr. Shashank Kumar Dey, Advocates for R-2.

Mr. Kishan Nautiyal and Mr. Abhay Singh, Advocates for R-5, Mr. Sanjeev Agarwal.

Mr. Chandra Shekhar, Mr. Prashant Shekhar, Mr. Ashwani Sani, Advocates.

Mr. Rohit Chaudhary, R-7 in person, through VC.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

21.01.2025

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CRL.L.P. 462/2016

1. The present leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973¹ has been filed, seeking setting aside of the impugned order dated 28th January, 2016² passed by the Metropolitan Magistrate in Criminal Complaint Case No. 751/1/14 titled “*UCO Bank v.*

¹ Cr.P.C.



M/s Surya Vinayak Industries Ltd. & Ors”, whereby the Magistrate acquitted Respondent Nos. 2 to 6 for the offence under Section 138 of the Negotiable Instruments Act, 1881.³

2. For the reasons discussed hereinunder, leave to appeal is granted.

3. Petition is disposed of.

CRL. A...../2024

4. Let this criminal appeal be registered and numbered.

5. The factual matrix leading to the filing of the present case, as narrated in the appeal, is as follows:

5.1 The Appellant is the Complainant in the proceedings initiated under Section 138 of the NI Act. The case of the Appellant is that they sanctioned a loan of INR 50 crores to Respondent No. 1 Company, Surya Vinayak Industries Limited. Respondent No. 2, the authorised director of Respondent No. 1, signed and executed various loan documents and Respondents Nos. 2 and 3 executed separate letters of guarantee, all dated 04th July, 2011 on behalf of Respondent No. 1 in favour of the Appellant.

5.2 Following defaults in repayment of the loan and accrued interest, the Respondents issued cheques in favour of the Appellant for payment. Upon presentation for encashment, these cheques were dishonoured with the reason “*payment stopped by drawer.*” Consequently, the Appellant issued a statutory notice, calling upon Respondent No. 1 and its directors (Respondents Nos. 2 to 6) to make payment of the cheque amounts. However, in the absence of any response or compliance from the Respondents, the Appellant initiated proceedings under Section 138 of the NI Act.

² “impugned order”



5.3 After recording pre-summoning evidence, the Magistrate issued order dated 22nd September, 2014, summoning the Respondents,⁴ requiring them to appear in the proceedings.

5.4 Aggrieved by the summoning order, the Respondents preferred Criminal Revision No. 20/2015 before the Court of ASJ. By an order dated 22nd April, 2015, the ASJ disposed of the revision petition, noting that the notice under Section 251 of the Cr.P.C, 1973 had yet to be framed. The ASJ clarified that the Respondents would be entitled to raise their submissions at the stage of framing of notice under Section 251, Cr.P.C.

5.5 Pursuant to the aforesaid order, the Respondents proceeded to argue the matter on the framing of notice under Section 251 of the Cr.P.C, culminating in the passing of the impugned order dated 28th January, 2016. By the said order, the Magistrate acquitted Respondents Nos. 2 to 6 at the stage of Section 251 of Cr.P.C., holding that there was insufficient material to frame notice against them.

6. The Appellant has approached this Court challenging the aforesaid impugned order. In this regard, Mr. Rajesh Rattan, counsel for the Appellant, makes the following submissions:

6.1 The Magistrate has committed a grave error in recalling its summoning order by discharging the accused. After the recording of pre-summoning evidence, the Magistrate had duly summoned Respondents No. 2 to 6. Thereafter, he could not have reviewed its own order and acquitted them.

6.2 Section 143 of the NI Act envisages the application of summary trial procedures, as prescribed under Sections 262 to 265 of the Cr.P.C., to

³ “the NI Act”



complaints under Section 138 of the NI Act. In case the Magistrate were to consider imposing a sentence exceeding one year, and is of the view that it is undesirable to try the case summarily, he can after hearing both the parties, record reasons under the second proviso of Section 143 of the NI Act and convert the trial into a summons trial. However, in the present case, the Magistrate has failed to pass any order giving any such reasons for proceeding under Chapter XX of the Cr.P.C. Instead, the Magistrate has erroneously acquitted the Respondents under Section 258, at the preliminary stage of framing the notice, without affording the Appellant an opportunity to conduct a trial and lead evidence.

6.3 The position of law regarding the recalling of summoning orders in complaints under Section 138 of the NI Act has been clarified by the Supreme Court in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re*,⁵ whereby the Court has clarified the following:

“20. Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply “as far as may be” to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act. The judgment of this Court in *Meters and Instruments* (supra) in so far as it conferred power on the Trial Court to discharge an accused is not good law. Support taken from the words “as far as may be” in Section 143 of the Act is inappropriate. The words “as far as may be” in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII....

21. A close scrutiny of the judgments of this Court in *Adalat Prasad* (supra) and *Subramaniam Sethuraman* (supra) would show that they do not warrant any reconsideration. The Trial Court cannot be

⁴ “summoning order”

⁵ (2021) 16 SCC 116.



conferred with inherent power either to review or recall the order of issuance of process. As held above, this Court, in its anxiety to cut down delays in the disposal of complaints under Section 138, has applied Section 258 to hold that the Trial Court has the power to discharge the accused even for reasons other than payment of compensation.”

[Emphasis Supplied]

7. In response, Mr. Kishan Nautiyal, counsel for Respondent No. 5, and Mr. Vijay Aggarwal, counsel for Respondent No. 2, submit that the impugned order was correctly passed in accordance with the law as was understood at the relevant time. They highlight that the summoning order issued by the Magistrate was challenged before the ASJ in Criminal Revision Petition No. 20/2015. The Revisional Court, relying on the judgment in ***Bhushan Kumar & Anr. v. State***,⁶ considered it appropriate to dispose of the petition granting the Respondents the liberty to raise their objections at the stage of framing notice under Section 251 of the Cr.P.C. They emphasize that while the legal position has evolved, with the Supreme Court clarifying that the accused’s plea cannot be entertained at the stage of framing notice under Section 251 of the Cr.P.C., the impugned order suffered no legal infirmity having regard to the law as interpreted and understood at the relevant time.

8. Nonetheless, they are agreeable to the impugned order being set aside, provided the Respondents are granted an opportunity to challenge the summoning order afresh in light of the revised interpretation of the law. They submit that the Respondents should not be prejudiced by the statutory limitation period, given the protracted pendency of the present proceedings and the subsequent clarification of legal principles by the Supreme Court.

9. The Court has carefully considered the submissions of the parties and



reviewed the impugned order in light of the legal principles laid down by the Supreme Court. The Magistrate's action of discharging the Respondents at the stage of framing notice under Section 251 of the Cr.P.C., effectively amounts to a recall of the summoning order. This, as clarified in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881*, is impermissible under the applicable law.

10. The Supreme Court unequivocally held that Section 258 of the Cr.P.C., which empowers the Magistrate to stop proceedings in summons cases, does not apply to complaints under Section 138 of the NI Act. The findings to the contrary in *Meters and Instruments Pvt. Ltd. v. Kanchan Mehta*⁷ have been expressly overruled. The relevant portion of the judgment reads as follows:

"20. ... Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act..."

11. It is, therefore, now settled that a Magistrate cannot recall a summoning order in proceedings under Section 138 of the NI Act or acquit the accused under Section 258 Cr.P.C. at stage of 251 Cr.P.C. Once a summoning order has been issued, the Magistrate is obligated to proceed with framing of notice under section 251 Cr.P.C.

12. Accordingly, the present petition is disposed of with the following directions:

12.1 The order dated 22nd April, 2015 passed in CR. No. 20/2015 as well

⁶ (2012) 5 SCC 424.

⁷ (2018) 1 SCC 560.



as the impugned order dated 28th January, 2016 are set aside.

12.2 Considering the fact that the Respondents' right to assail the summoning order was not adjudicated on merits, it is directed that the Respondents shall be at liberty to assail the summoning order dated 22nd September, 2014 by availing appropriate remedies, in accordance with law.

12.3 Considering the pendency of these proceedings and the subsequent clarification of legal principles by the Supreme Court, it is directed that, if the Respondents choose to prefer a revision petition under Section 397 of the Cr.P.C., challenging the summoning order, such petition shall not be dismissed solely on the grounds of limitation. However, the Court clarifies that it has made no observations on the maintainability of such a petition. All rights and contentions of the parties are reserved, and any revision petition, if filed, shall be considered strictly in accordance with law.

13. With the above directions, the present petition is disposed of along with pending application(s).

SANJEEV NARULA, J

JANUARY 21, 2025/ab