



2025:DHC:1343



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 27th February, 2025*+ **CRL.M.C. 5118/2017****MANISH JHA**

S/o Shri Gunanand Jha,
Resident of C-5/12, Gali no. 1,
Dheeraj Nagar, Part ii,
Faridabad, Haryana.

Through: Mr. Deepak Pathak, Advocate

Versus

1. STATE OF GNCTD

Through Standing Counsel

2. SMT. SUNITA JHA

W/o Shri Virdner Kumar Jha
R/o B-273, Gurdwara Road
Sangam Vihar,
New Delhi

3. SMT. RUPAM JHA

W/o Shri Mrituyan Jay Jha
R/o B-345 Sangam Vihar
Near block B Block Gurdwara
Sangam Vihar

4. SHRI MRITYUNJAY JHA

R/o B-345 Sangam Vihar
Near B Block Gurdwara
Sangam Vihar
New Delhi

.....Respondents

Through: Mr. Shoaib Haider, Additional
Public Prosecutor for Respondent-
State



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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India has been filed for quashing of summoning order dated 21.08.2017 passed by the learned Metropolitan Magistrate.
2. It is submitted in the Petition that the Complainant had filed the Complaint against the Petitioner alleging that a cheque bearing No. 9915505 was issued by the Petitioner on his account maintained at Canara Bank, Hauz Khan Branch, New Delhi for an amount of Rs.9,10,000/- in favour of the Complainant under a self written receipt of the Complainant dated 19.02.20213 towards the liability of the loan taken by brother and sister-in-law of the Petitioner i.e. Respondents No.3 & 4.
3. The Cheque was allegedly taken away by Respondent No.3 after about one year. The Complainant has not annexed the Cheque or the copy thereof before the Trial Court and made pre-summoning deposition of cheating. The falsity and fraudulent statement made by the Complainant stands exposed in light of the fact that the said Cheque was already withdrawn /used by the Petitioner way back in 29.02.2003 and thereafter, the said Cheque was destroyed by the Bank and certificate to this effect was issued on 02.11.2017.
4. The Petitioner has asserted that how can a Cheque be given when the same stood destroyed and without the Cheque been annexed by the



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Complainant along with his Complaint, there is a blatant lie as the Cheque already stood destroyed and there is no question of it being in use and as such, could not have been given to the Complainant. The Complaint is based on false and baseless story. The summoning order dated 21.08.2017 of the learned M.M. has been obtained by serious fraud and misrepresentation. The summoning is therefore bad in law and is liable to be set aside.

5. It is further asserted that Complainant has abused the process of law by filing a complaint under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. regarding an alleged financial transaction made between the Complainant and Respondent No.3- Ms. Rupam Jha, sister-in-law/ *Bhabhi* of Petitioner and Respondent No.4- Shri Mritunjay Jha, brother of the Petitioner.

6. It was alleged by the Complainant that in order to repay the loan/ civil transaction, Respondent No.3 & 4 had handed over two Cheques of Rs.40,000/-; and another Cheque bearing No.991505 in the sum of Rs.9,10,000/- under an alleged settlement entered between the Complainant and Respondent No.3.

7. The Petitioner has alleged that the complaint has given a totally false and concocted story, as the certificate dated 02.11.2017 issued by the Bank in respect of the Cheque, that it was utilized for withdrawal of cash of Rs.500/- by the Petitioner on 29.03.2003 and that the Cheque has been destroyed as per bank policy.

8. The fraudulent act of Respondent/Complainant is also evident as to how a Cheque which was encashed 15 years back and was in the custody



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of the bank and was destroyed as per weeding policy, could be given to the Complainant by Respondent No.3. It is a case of forgery by the Complainant and the Petitioner had nothing to do with alleged transaction between the Complainant and Respondents No.3 & 4 and he has been victimized by planting a false case against him, thereby infringing his fundamental rights. Moreover, different versions have been given in the complaint and it does not make out a case under Section 420 IPC against the Petitioner.

9. The Petitioner never took a loan nor made any payment nor was there any alleged transaction of money between the Complainant and Respondent No.3. The impugned order dated 21.08.2017 is liable to be set aside.

10. **Submission heard and record perused.**

11. In the impugned summoning order dated 21.08.2017, it has been specifically observed that the averments made in the Complaint in respect of accused persons that they had dishonestly induced the Complainant to advance a sum of Rs.50,000, Rs.4,50,000/- and Rs.9,50,000/- to the prospective accused persons from October, 2012 till February, 2013. A receipt-cum-acknowledgement was also executed in this regard on 19.02.2013 and the accused persons did not return the cheated amount. The Petitioner has been summoned under Sections 420/120 B IPC.

12. It is the specific case of the Petitioner that the amounts given to the prospective accused persons by the Complainant have not been returned.

13. The defence of the Petitioner that the alleged cheque had been encashed way back in the year 2013 for a sum of Rs.500/- by withdrawal



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of cash and the falsity of the assertions made in the Complaint itself is evident from this fact.

14. However, this is a specific defence taken by the Petitioner, which he needs to establish in the pre-charge evidence, which is being recorded by the Court. From the Complaint and the pre-summoning evidence, it has been observed by the learned M.M. that offence under Section 420/120B is clearly made out.

15. The defence taken cannot be considered at the stage of pre-summoning and is required to be proved at the appropriate stage.

16. There is no ground for quashing of the summoning order dated 21.08.2017.

17. The present Petition and pending Application(s), if any, are accordingly dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 27, 2025

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