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

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+ CRL.M.C. 3183/2024

PUNEET BHASIN

..... Petitioner

Through: Mr. Sidharth Luthra, Senior Advocate
with Mr. Karan Singh Rajput, Mr. Karan Khanuja,
Mr. Pushendra S. Bhadoriya, Mr. Mihir Joshi and
Mr. Udbhav Sinha, Advocates

versus

KHANNA TRADERS AND ENGINEERS

..... Respondent

Through: None.

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+ CRL.M.C. 3210/2024

ARSHPREET BHASIN

..... Petitioner

Through: Mr. Sidharth Luthra, Senior Advocate
with Mr. Karan Singh Rajput, Mr. Karan Khanuja,
Mr. Pushendra S. Bhadoriya, Mr. Mihir Joshi and
Mr. Udbhav Sinha, Advocates

versus

KHANNA TRADERS AND ENGINEERS

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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25.04.2024

**CRL.M.A. 12288/2024 & CRL.M.A. 12398/2024 (exemptions) in
CRL.M.C. 3183/2024**

**CRL.M.A. 12375/2024 & CRL.M.A. 12376/2024 (exemptions) in
CRL.M.C. 3210/2024**

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.



CRL.M.C. 3183/2024 & CRL.M.A. 12287/2024 (stay)
CRL.M.C. 3210/2024 & CRL.M.A. 12374/2024 (stay)

3. These petitions have been preferred on behalf of the Petitioners under Section 482 Cr.P.C. laying a challenge to order dated 22.02.2024 passed by the Revision Court in Crl. Revision No. 160/2022 pertaining to a complaint under Section 138 of Negotiable Instruments Act, 1881 ('NI Act') in CC No. 4935/2019 pending before the learned Metropolitan Magistrate (NI Act-02), New Delhi District, Patiala House Courts, New Delhi with all criminal proceedings emanating therefrom.

4. As per the Petitioners, their deceased mother late Mrs. Gurmit Kaur Bhasin was the sole proprietress of the proprietorship concern M/s. G.M. Enterprises. She expired on 20.07.2017 and the proprietorship concern ceased to exist. Mrs. Bhasin was survived by three legal heirs i.e. her husband and Petitioners herein. Petitioners and their father formed an unregistered partnership firm under the name and style of M/s G.M. Enterprises. Father of the Petitioners was in-charge of the affairs and business of the firm and Petitioners were not responsible for the day-to-day affairs or the business operations of the partnership firm. Father of the Petitioners also expired on 10.11.2018.

5. It is further averred that the erstwhile Manager of the proprietorship concern namely, Pradip Kumar, who is also an accused in the criminal complaint, misappropriated the funds of the proprietorship concern and was involved in taking commissions from the suppliers. He illegally issued cheque from the account of the proprietorship, after the death of the sole proprietress. In November, 2018, Petitioners learnt of cheques having been issued and accordingly informed the Respondent Company not to deposit



the same in the bank as they were forged. This fact is also acknowledged by the Respondent Company in its e-mail dated 21.12.2018. Services of Pradip Kumar were terminated from the partnership firm on 17.04.2019 for misappropriation of funds. Another communication was sent on 18.05.2019 by the Accounts Executive of the firm to the Respondent requesting them not to deposit the cheque, which was acknowledged and responded to by the Respondent Company. However, for reasons best known to it, cheque was deposited and was dishonoured. Petitioners also sent a legal notice dated 08.03.2020 to the Respondent stating that internal audits revealed that Respondent had never supplied any material to them and therefore, the bills raised were incorrect. A police complaint has been filed against Pradip Kumar on 08.07.2021 for theft, forgery, cheating, fraud and criminal breach of trust.

6. It is averred that Petitioners were not aware that criminal complaint has been filed against them alleging dishonour of cheque and only learnt when non-bailable warrants were issued. On 19.12.2021, Petitioners sought cancellation of the warrants and the applications were allowed on 22.12.2021 by the learned MM. Petitioners filed criminal revision including revision petition bearing No. 160/2022 before the Revisional Court seeking setting aside of the order dated 20.06.2019 whereby processes were issued against the Petitioners followed by summons under Section 138 of the NI Act, which were erroneously dismissed by the impugned order dated 22.02.2024.

7. Mr. Sidharth Luthra, learned Senior counsel appearing for the Petitioners argues that learned MM has mechanically passed an order issuing process and thereafter summons to the Petitioners without



appreciating that Petitioners have no concern with the dishonoured cheque as it was neither issued by them nor any of the Petitioners is a signatory thereto. Petitioners were not the sole or joint holders of the account from which the alleged dishonoured cheque was issued and in fact, internal audit reflected that the bills raised by the Respondent were fictitious as no material was supplied by it and therefore, even otherwise, Petitioners have no enforceable debt against them. Petitioners were not in-charge of day-to-day affairs of the proprietorship concern or the partnership firm and clearly the complaint is bereft of any role qua the Petitioners leading to dishonour of the cheque. Attention of the Court is drawn to the contents of the complaint to show that there is no allegation or a statement that Petitioners were in-charge and responsible for day-to-day functioning of the business of M/s G.M. Enterprises and therefore, the basic ingredients of offence under Sections 138 and 141 of the NI Act are not made out. These facts were brought to the notice of the Respondent Company in the reply to the legal notice sent by it.

8. Mr. Luthra further urges that the cheque was issued two years after the death of late Mrs. Gurmit Kaur Bhasin and without any authorisation in favour of Pradip Kumar to do so and Petitioners are being falsely implicated only because they are the children of late Mrs. Bhasin and were partners in the unregistered firm. It is submitted that the Supreme Court in *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others, (1998) 5 SCC 749*, has held that summoning of an accused in a criminal case is a serious matter. Order of the Magistrate summoning an accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Impugned order indicates that the learned Magistrate has not scrutinized the



facts brought before him carefully to even *prima facie* ascertain the truthfulness of the allegations and/or if any offence is made out against the Petitioners. It is further contended that a bare perusal of the complaint would reflect that Petitioners reside in the State of Maharashtra and therefore, learned Magistrate ought to have conducted an inquiry by virtue of Section 202(1) Cr.P.C. before issuance of the process, considering that both reside beyond the territorial jurisdiction of the Court. In this context, reliance is placed on the judgment of the Supreme Court in ***In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881, Suo Motu Writ Petition (Crl.) No. 2 of 2020***, Order dated 16.04.2021, where the Supreme Court observed as under:-

“Inquiry under Section 202 of the Code in relation to Section 145 of the Act

10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-6-2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See : Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479], Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828]) There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available



on record.

11. The learned Amici Curiae referred to a judgment of this Court in *K.S. Joseph v. Philips Carbon Black Ltd.*, (2016) 11 SCC 105 : (2016) 4 SCC (Civ) 616 : (2017) 1 SCC (Cri) 270] where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in *Vijay Dhanuka* [*Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] *Abhijit Pawar* [*Abhijit Pawar v. Hemant Madhukar Nimbalkar*, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and *Birla Corpn.* [*Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828], the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.”

9. In my view, the factual and the legal issues raised by the Petitioners require consideration.
10. Issue notice to Respondent, through all permissible modes, returnable on 18.07.2024.
11. In the meantime, learned Trial Court is requested to defer the proceedings before it to a date beyond the date fixed by this Court.

JYOTI SINGH, J

APRIL 25, 2024/kks/shivam