



\$~J-

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

Date of Decision: 26th February 2026

+ CRL.M.C. 5260/2024, CRL.M.A. 20106/2024, CRL.M.A.
29693/2025

AEIFORIA CONSTRUCTIONS PVT. LTD. & ANR.

.....Petitioners

Through: Mr. Mrinal Kumar Sharma and Mr.
Veer Bhadra Singh, Advocates.

versus

CONTINENTAL CARBON INDIA PVT. LTD.

.....Respondent

Through: Mr. Gauhar Mirza, Advocate.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C'), the petitioners (accused persons) *inter-alia* seek quashing of summoning order dated 29.04.2023 passed by the learned Metropolitan Magistrate, Digital Court-01, Patiala House Courts, New Delhi in criminal complaint bearing CC NI Act No. 9670/2022 in proceedings under section 138 of the Negotiable Instruments Act, 1881 ('NI Act').

2. Notice on this petition was issued *vidé* order dated 12.07.2024, whereby upon a first blush reading of the impugned order, this court was constrained to stay proceedings pending before the learned



Magistrate, since the summoning order appeared to be in the nature of a *template order* and failed to reflect any application of mind to the facts of the case, as would be necessary prior to issuance of summons to the accused persons.

3. *Vidé* order dated 12.07.2024 the State was deleted as party-respondent in the matter. Counter-affidavit dated 11.08.2024 has subsequently been filed on behalf the sole respondent (complainant) in the case. Written submissions have also been filed by the parties. The court has heard Mr. Mrinal Kumar Sharma, learned counsel appearing on behalf of the petitioners; and Mr. Gauhar Mirza, learned counsel appearing on behalf of the respondent.

FACTUAL MATRIX

4. Briefly, the dispute between the parties arises from an Agreement dated 01.04.2019 signed between the respondent and the petitioners, under which the parties *inter-alia* had agreed upon various timelines for completion of certain construction projects and payments were to be made by the petitioners to the respondent in that regard.
5. Thereafter, owing to certain disputes as to the timelines and payments made, the parties signed a Security Bond dated 09.04.2021 under which the respondent released the balance sum of Rs. 2,24,71,917/- to the petitioners. Thereupon, the petitioners issued to the respondent a cheque bearing No. 003503, which was later replaced by another cheque bearing No. 003504, as 'security' against the payment so made. Since the respondent alleged that further defaults had been committed by the petitioners in completing the work, the respondent presented the 'security' cheque bearing No. 003504 for encashment,



which cheque was returned by the petitioners' bank unpaid *vidé* a cheque return memo dated 01.07.2020 citing "*Funds Insufficient*" as the reason.

6. Consequently, the respondent issued a Legal Notice dated 29.07.2022 to the petitioners, following which a complaint dated 12.09.2022 came to be filed under section 138 of the NI Act bearing CC NI Act No. 9670/2022, in which complaint summons were issued *vidé* impugned order dated 29.04.2023; and notice under section 251 Cr.P.C. was also framed against the petitioners on 31.08.2023. The matter before the learned Magistrate is stated to be at the stage of complainant's evidence.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

7. Mr. Sharma submits, that the cheque for Rs.2,24,71,917/- was issued merely as a 'security' instrument under the Security Bond dated 09.04.2021, and was not meant to be presented for immediate encashment. It is argued that clause 5 of the bond specifically stipulated that the cheque could be presented only upon written intimation of default to the petitioners, and after allowing a 45-day cure period. The petitioners' contention is that no such intimation was issued before encashment, which made the presentment of the cheque contrary to the contractual terms.
8. The petitioners dispute their liability as alleged by the respondent against the cheque, contending that the project was over 90% complete and corresponding payments had been received by the respondent. Accordingly, it is argued that as of the date of presentment of the cheque, no 'enforceable debt or liability' existed



within the meaning of section 138 of the NI Act; and therefore, the proceedings under section 138 are not maintainable.

9. Furthermore, Mr. Sharma argues that the learned Magistrate has proceeded to issue summons to the accused persons in a perfunctory and mechanical manner, without *prima facie* examining whether the ingredients of the offence under section 138 of the NI Act are made-out, especially considering that the cheque had been issued only by way of ‘security’.
10. In this regard, learned counsel draws attention to the impugned summoning order, which reads as under:

“I have perused the complaint along with other supporting documents and it appears that the board resolution in favour of the AR of the complainant company does not bear the signature of any director.

“Ld. Counsel for complainant submits that she will rectify the mistake and will file the amended board resolution on the NDOH.

“I have perused the complaint along with other supporting documents and it appears that the complete volume of the Digital file is not uploaded on LAYERS.

“The Reader of this court is directed to upload the same on LAYERS as per rules.

“1. I have perused the complaint, Authorization in favour of the AR of the complainant, pre-summoning evidence by way of affidavit of the AR of the complainant and the documents relied upon by the complainant. The present complaint has been filed within the limitation/extended period of limitation (In Re Cognizance for Extension of Limitation dated 08.03.2021 (Suo Moto Writ Petition (Civil) No.3/2020 and miscellaneous application No. 665/2021) and is within the jurisdiction of this Court. The complaint and the original documents have been



submitted to the Ahlmad for safe custody. The documents have been identified today in accordance with the pre-summoning evidence by way of affidavit.

“2. In light of the decision of the Hon'ble Supreme Court in A.C. Narayanan v. State of Maharashtra &Anr. (2014) 11 SCC 790, Full Bench, examination of the complainant upon oath for issuance of process is a matter of discretion of the Magistrate. In the considered opinion of this Court, there is no need to examine the complainant for the purpose of issuance of process. There is sufficient material before this Court to proceed against the accused. I hereby take cognizance of the offence under Section 138 of the NI Act.

“3. Accordingly, issue summons to accused no. 1 and 2 for being the drawer and signatory to the impugned cheque. The summons are to be sent upon filing of PF/RC within one month from today, returnable on 07.08.2023. The complainant is directed to file metadata form before filing of PF. The process server is directed to serve the summons by way of affixation, if premises are found locked or same could not be served personally or on any adult male member. To expedite service, the complainant is at liberty to serve the summons through speed post/approved courier, subject to filing internet generated tracking report of service on the next date of hearing. The complainant may also send summons through email and WhatsApp to the accused and file the requisite affidavit of service along with Certificate u/S 65B Evidence Act on the next date of hearing.

“4. An endorsement be also made on the form for summons that if application for compounding at first or second hearing is made, the Court may pass appropriate orders at the earliest as per judgment of M/s Meters & Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 and if settlement is made at subsequent stages, the consequences as provided in Damodar S. Prabhu v. Syed Babulal H; (2010) 5 SCC 663 shall be enforced.

“5. The Ahlmad is directed to mention the official email id of the Court, the URL link as well as the permanent meeting number of video conferencing through CISCO Webex platform, on the form for



issuance of summons. Complainant is directed to file PF and provide copies of the complaint and other necessary documents, within one month from today, failing which the complaint may be dismissed under Section 204(4). CrPC.

“6. Renotify for appearance of the accused/furnishing of bail bonds/consideration on Notice under Section 251. CrPC on 07.08.2023.”

(emphasis supplied)

11. Learned counsel submits, that in view of the law laid down by the Supreme Court in *Pepsi Foods Ltd .& Anr. vs. Special Judicial Magistrate & Ors.*,¹ *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel*,² and *Mehmood Ul Rehman vs. Khazir Mohammad Tunda & Ors.*,³ the impugned summoning order deserves to be set-aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

12. Appearing on behalf of the respondent, Mr. Mirza opposes the quashing of the summoning order in the proceedings under section 138 of the NI Act, submitting that the complaint *prima-facie* discloses commission of the offence under section 138 of the NI Act by the petitioners, warranting trial.
13. Learned counsel submits, that the present petition is misconceived, since issuance of the cheque and the signatures appearing thereon stand admitted by the petitioners; and that therefore, the statutory presumption under section 139 of the NI Act operates against the petitioners.

¹ (1998) 5 SCC 749

² (2023) 1 SCC 578

³ (2015) 12 SCC 420



14. Mr. Mirza submits, that whether the cheque was given as ‘security’ or towards an accrued debt, is a matter of evidence and is not a defence to be considered by the learned Magistrate at the stage of issuance of summons.
15. In support of his submissions, learned counsel for the respondent has placed reliance on *APS Forex Services (P) Ltd. vs. Shakti International Fashion Linker*;⁴ *Shiv Kumar vs. Ramavtar Agarwal*;⁵ *Northern India Paint Colour & Varnish Co. LLP vs. Sushil Chaudhary*;⁶ and *Sripati Singh vs. State of Jharkhand & Anr.*,⁷ arguing that the legal presumption inures in favour of the holder of the cheque; and that even dishonour of a cheque given as ‘security’ attracts liability under section 138 of the NI Act when the underlying obligation remains unpaid.
16. It is argued that the powers under section 482 of the Cr.P.C. are to be exercised sparingly; and only where proceedings are demonstrably vexatious or legally untenable should the High Court quash pending criminal proceedings.
17. In support of this submissions, learned counsel also relies upon judgments of the Supreme Court in *Vipin Kr. Gupta vs. Sarvesh Mahajan*;⁸ *Rathish Babu Unnikrishnan vs. State*;⁹ and *Rajiv Thapar*

⁴ (2020) 12 SCC 724

⁵ (2020) 12 SCC 500

⁶ 2023 SCC OnLine Del 7193

⁷ (2022) 18 SCC 614

⁸ 2019 SCC OnLine Del 12349

⁹ 2022 SCC OnLine SC 513



vs. Madan Lal Kapoor,¹⁰ to contend that disputed factual issues, such as existence of liability or contractual breach, fall within the domain of the learned trial court and should not be entertained as grounds for quashing of proceedings.

18. Mr. Mirza further argues, that as per settled law, there is no requirement for a Magistrate to record reasons while passing a summoning order. Furthermore, learned counsel argues, that the meta-data filed by the respondent along with the complaint gives the requisite details of the matter, which was placed before the learned Magistrate at the stage of taking cognizance and issuance of summons, thereby ensuring that the learned Magistrate had applied his mind before issuing summonses.
19. Reliance in this regard is placed on *Sunil Todi vs. State of Gujarat*,¹¹ *Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal*,¹² and *State of Gujarat vs. Afroz Mohammed Hasanfatta*,¹³ which judgments affirm that a Magistrate only needs to ascertain that there are sufficient grounds to proceed, and a detailed order is not required at the summoning stage.
20. Lastly, it is also argued that petitioners chose to file the present petition only after notice was framed on 31.08.2023 under section 251 of the Cr.P.C., in which proceedings the petitioners had admitted their signatures on the cheque and receipt of the statutory legal notice. It is

¹⁰ (2013) 3 SCC 330

¹¹ (2022) 16 SCC 762

¹² (2003) 4 SCC 139

¹³ (2019) 20 SCC 539



submitted that the order framing notice, which is a revisable order, ought to have been challenged, if at all, within a period of 90 days; instead of filing the present petition, which came to be filed much later, only on 11.07.2024.

LEGAL LANDSCAPE

21. Examining the relevant legal landscape, in *Sunil Todi* the Supreme Court has *inter-alia* observed as follows:

“41. In Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd. [Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828], the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted : (SCC p. 628, para 26)

“26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.”

* * * * *

“46. In the present case, the Magistrate has adverted to:

- (i) The complaint;*
- (ii) The affidavit filed by the complainant;*
- (iii) The evidence as per evidence list and; and*
- (iv) The submissions of the complainant.*

“47. The order passed by the Magistrate cannot be held to be invalid as betraying a non-application of mind. In Chief Controller of Imports & Exports v. Roshanlal Agarwal [Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4



SCC 139 : 2003 SCC (Cri) 788], this Court has held that **in determining the question as to whether process is to be issued, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.** Whether the evidence is adequate for supporting the conviction can only be determined at the trial. [See also in this context the decision in *Bhushan Kumar v. State (NCT of Delhi)* [*Bhushan Kumar v. State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872].”

(emphasis supplied)

22. In its judgment in *Mehmood Ul Rehman* while relying on the celebrated judgment of the Supreme Court in *Pepsi Foods Ltd.*, and emphasizing the seriousness of setting in motion the process of criminal law against a person, the Supreme Court has reiterated the following:

“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. **Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd.* [*Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.**

* * * * *

“22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC **should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged,** to appear before the court. The satisfaction on the



ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. **No doubt, no formal order or a speaking order is required to be passed at that stage.** The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. **In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.**

“23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. **The contention that the application of mind has to be inferred cannot be appreciated.** The further contention that without application of mind, the process will not be issued cannot also be appreciated. **Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence** and the statements recorded under



*Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. **The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court.** There is no indication in that regard in the order passed by the learned Magistrate.”*

(emphasis supplied)

23. Furthermore, in its recent judgment in *JM Laboratories & Ors. vs. State of A.P & Anr.*,¹⁴ the Supreme Court has re-enunciated that a summoning order passed by a Magistrate should *reflect* his application of mind in the following words:

“8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled “INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh”, we have observed thus:

“33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.

“34. In this respect, it will be relevant to refer to the following observations of this Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749 (supra):

*“28. **Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.** He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the*

¹⁴ 2025 SCC OnLine SC 208



truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

* * * * *

“37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of *Lalankumar Singh v. State of Maharashtra* 2022 SCC OnLine SC 1383 (*supra*), has observed thus:

“38. **The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons.** A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*, which reads thus:

* * * * *

“53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

* * * * *

“9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled “INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh”, and the legal position as has been laid down by this Court in a catena of judgments including in the cases of *Pepsi Foods Ltd. v. Special Judicial Magistrate*, *Sunil Bharti Mittal v. Central Bureau of Investigation*, *Mehmood Ul Rehman v. Khazir Mohammad Tunda* and *Krishna Lal Chawla v. State of Uttar Pradesh*, the present appeal deserves to be allowed.”

(emphasis supplied)



DISCUSSION AND CONCLUSIONS

24. In the present case, it is noticed that the learned Magistrate has referred in some detail to the procedural aspects and steps that are to be complied-with by the complainant for the physical process of issuing summons to the accused persons, and has set-out the mode and manner in which the summons are to be served or affixed; and how the tracking report is to be generated, including the various modes and platforms through which summons are to be served. There is however no reference to some of the essential ingredients of the offence under section 138 of the NI Act namely, the reason for which the cheque has been returned unpaid; whether the statutory notice under section 138 of the NI Act had been issued and received by the accused person(s); and whether the timelines prescribed for the aforementioned aspects have been adhered to.
25. Though, there is no cavil with the proposition that it is not necessary for the Magistrate to set-out or discuss *in detail* the specifics and particulars of the factual matrix in which the complaint has been filed, the settled law on the point also requires that the Magistrate *must be satisfied* that there are sufficient grounds for proceeding with the matter (not that there are sufficient grounds for conviction). In the opinion of this court, such satisfaction must also be *reflected* in the summoning order, to ensure that the Magistrate does not omit to check those ingredients, since failing that, a court before which a summoning order is challenged would be bereft of any basis for examining whether such order has been validly issued.



26. It would be reckless for the courts to disregard the cautionary words of the Supreme Court in *Pepsi Foods*, namely that issuance of summons in a criminal case is a very serious matter, since even mere issuance of summons by criminal court may stigmatise a person, who may not be required to be summonsed at all.
27. Considering that the summoning order in the present case is dated 29.04.2023, and since this court has perused the complaint, the requisite documents, including the subject cheque, the cheque dishonour memo, and the statutory notice issued under section 138 of the NI Act, that have been placed before it, this court would refrain from interfering with the impugned summoning order, though the ingredients of the offence do not find any mention in it.
28. In view of what is recorded above, upon considering the impugned order in the present case, and bearing in mind that it is also necessary to proceed with matters under section 138 of NI Act as expeditiously as possible, this court is not inclined to interfere with the impugned summoning order in the present case.
29. The petition is accordingly dismissed, declining to interfere with the impugned summoning order; vacating the stay initially granted; and directing the learned Magistrate to proceed with the matter, in accordance with law.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 26, 2026/HMJ