



2025:DHC:9845



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

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*Reserved on: 23rd September, 2025
Pronounced on: 11th November, 2025*

+ **CRL.M.C. 1379/2021, CRL.M.A. 8542/2021 & CRL.M.A. 14167/2024**

MANMOHAN GAIND

Director

M/s Mahesh Prefab Pvt. Ltd.

AM Towers, 498, Udyog Vihar-III

Gurugram-122016

.....Petitioner

Through: Mr. Rajnish Kumar Gaind,
Mr. Hemant Kaushik and Mr.
Himanshu Gupta, Advocates

versus

NEGOLICE INDIA PVT. LTD

Having its Corporate Office

At E-13/29, Ist Floor, Harsha

Bhawan, Connaught Place,

New Delhi-110001

.....Respondent

Through: Mr. Umakant Kataria and Mr. Pulak
Gupta, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Present Petition has been filed by the Petitioner/Mr. Manmohan Gaind, Director of *M/s Mahesh Prefab Pvt. Ltd* under Section 482 of the Cr.P.C. for the quashing of the Criminal Complaint bearing No. 1982/2017 and for setting aside the *summoning Order dated 18.12.2018* of the Learned Metropolitan Magistrate, filed by the Respondent/*M/s Negolice India Ltd.*,



under Section 138 read with Section 141 Negotiable Instruments Act, 1881 (NI Act).

2. ***Briefly stated***, on 28.02.2013 the Respondent/M/s *Negolice India Ltd.* awarded a Work Order to the Petitioner's Company, M/s Mahesh Prefab Pvt. Ltd. for the "*Supply and Installation of GRC Grills*" for a total consideration of Rs. 56,86,633/-. As per the terms of the contract, the Respondent paid a 15% mobilization advance of Rs. 6,82,416/- to the Petitioner's Company. Against this payment, the Petitioner's Company issued an *advance cheque* (the "impugned cheque") bearing No. 723223 for the equivalent amount of Rs. 6,82,416/- as security for the advance.

3. It is stated by the Petitioner that while the work was in progress, the Respondent "illegally, arbitrarily, abruptly and unjustly terminated the contract". A dispute arose regarding the final accounts.

4. On 26.03.2014, the Petitioner's Company sent an e-mail with its final Bill, claiming work done to the value of Rs. 5,85,472/-. After adjusting this amount and TDS in the sum of Rs. 13,648/- from the advance received in the sum of Rs. 6,82,400/-, the Petitioner's Company asserted that only a balance of Rs. 69,647/- was payable *by them* to the Respondent.

5. The Respondent, by its Letter dated 18.04.2014, refuted the Petitioner's Bill. The Respondent claimed that only Rs. 3,20,881/- worth of work was completed and, therefore, demanded the refund of the unadjusted mobilization advance, which *they calculated* as Rs. 3,61,847/-.

6. The Petitioner's Company replied on 25.04.2014, requesting a "*joint measurement*" to resolve the disputed amount, but this was not acceded by the Respondent. Subsequently, the Respondent sent another Letter on



31.05.2014, reiterating its demand for Rs. 3,61,847/- and explicitly threatening to present the *full security cheque* of Rs. 6,82,416/-.

7. In response, the Petitioner's Company sent a registered Legal Notice on 06.06.2014 to the Respondent, explicitly calling upon them *not* to present the security cheque. The Notice reiterated that the amount payable, if any, was disputed and certainly not Rs. 6,82,416/-.

8. Despite this Notice and the ongoing dispute, the Respondent presented the impugned cheque, which was returned unpaid with the remark "*account closed*".

9. On 22.12.2015, the Petitioner received a statutory Notice under Section 138 of the NI Act for the dishonour of the Rs. 6,82,416/- cheque. The Petitioner's Company replied on 06.01.2016, reiterating that the cheque was for security and not against any existing liability.

10. The Respondent filed the impugned Criminal Complaint No. 1982/2017 in February 2016, and was summoned vide impugned summoning order on 18.12.2018, by the Ld. Magistrate.

11. It is asserted by the Petitioner that, the MM wrongly recorded delivery of summons and issued Bailable Warrants for failure of the accused to appear on several dates on 2019, 2020, and 2021.

12. ***The Petitioner has challenged*** the impugned *Summoning Order* and the Complaint on the grounds that the Ld. Magistrate issued the **summoning order mechanically** and in a routine manner, without appreciating the facts of the case or the distinction between a civil and criminal liability.

13. The **impugned cheque was**, admittedly, given as **security** for the mobilization advance and not for the discharge of any existing or past debt or liability, which is a *sine qua non* for an offence under Section 138. The



date was not even written on the cheque when issued, further establishing its nature as security.

14. The dispute between the parties is of a civil nature, arising from a breach of contract, which is being improperly converted into a criminal prosecution to harass the Petitioner.

15. The presentation of the cheque was *mala fide* and an abuse of process. The Respondent's own written demand, as per its letters dated 18.04.2014 and 31.05.2014, was only for Rs. 3,61,847/-. Therefore, the Respondent had no legal right to present a cheque for a much larger, un-adjudicated amount of Rs. 6,82,416/-.

16. The Respondent knowingly presented the cheque after receiving a specific Legal Notice from the Petitioner dated 06.06.2014 and its subsequent Reply dated 26.02.2015 to the statutory Notice, warning them not to present the said security cheque, a fact which was deliberately concealed from the Ld. Trial Court, at the time of summoning.

17. Thus, it is prayed that the Petition be allowed and the Complaint under S.138 NI Act, be dismissed.

18. **The Respondent/M/s Negolice India Ltd., in its Reply** has stated that the Petitioner's Company was awarded a Work Order for Rs. 56,86,633/- for GRC Grill work. An advance payment of Rs. 6,82,416/- was made towards mobilization.

19. The Petitioner's Company, as a part of the contract and in tune with the Indemnity Bond dated 08.03.2013, issued the cheque (No. 723223 for Rs. 6,82,416/-) *with an express and willful promise* that it could be encashed without prior notice if the Petitioner was unable to perform the contract terms, or in the discharge of the **existing and outstanding liability for**



payment of damages including recovery of unadjusted advance payment. It is submitted that the Petitioner also undertook not to close the Bank Account.

20. The Petitioner failed to complete the Work as obligated by the Contract deadline of 06.06.2013. It is claimed by the Respondent that the total recoverable debt/liability was **Rs. 7,20,649/-**, which included **Rs. 3,61,847/-** for the refund of the unadjusted mobilization advance, **Rs. 2,84,331/-** towards penalty, and **Rs. 74,471/-** towards interest, terms of the Contract/Indemnity Bond.

21. The cheque was presented to recover the outstanding dues/losses, but was dishonored which was intentional, deliberate, and *mala fide*, in violation of the Indemnity Bond.

22. It is submitted that the statutory Legal Notice dated 22.12.2015 was served, but payment was not made, leading to the filing of the Criminal Complaint under S.138 NI Act.

23. *Thus, it is prayed that the Petition be dismissed.*

Submissions Heard and Record Perused.

24. Admittedly, the Petitioner's Company was given a mobilization advance of Rs. 6,82,416/-, against which it gave the impugned cheque as security. A dispute subsequently arose regarding the quantum of work completed, upon the termination of the contract.

I. Security Cheque:

25. ***The first issue*** is whether the said cheque was a security cheque and thus, could not have been presented unless there was an occasion for its presentment. Before assessing the merits of the issue, we may refer to the law in this regard.



26. PDCs (Post-Dated Cheques) issued as security for financial liability mature into an actual outstanding liability, the legal position is nuanced.

27. The determining factor is whether a legally enforceable debt or liability *exists on the date the cheque is presented* for encashment, and not on the date it was drawn or handed over.

28. Where a cheque is given as security for a contract or a loan and the liability arising from that contract or loan, *crystallizes* into a legally enforceable debt at a later date, the cheque, even if originally a “security” one, assumes the character of a cheque issued in discharge of that debt for the purpose of Section 138.

29. In this regard reference may be made to the judgement of the Apex Court in Indus Airways Private Limited versus Magnum Aviation Private Limited, (2014) 12 SCC 539, wherein the Court considered the question whether post-dated cheque issued by way of advance payment for a Purchase Order, could be considered for discharge of legally enforceable debt. It was held that while the purchaser may be liable for breach of the contract, when a contract provides that the purchaser has to pay in advance.

30. This proposition was reiterated by the Apex Court in Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458, wherein it was observed by the Court that the question whether a post-dated cheque is for “discharge of debt or liability” depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, Section 138 is attracted.



31. The concept of Security Cheques was explained by the Apex Court in the case of Sripati Singh vs. State of Jharkhand, (2022) 18 SCC 614, wherein it was observed:

*“21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. “Security” in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; **if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same.** On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.”*

32. The Security Cheques are only given to be utilised if subsequently, during the business transactions, certain liabilities arise which are not fulfilled by the Petitioners.

33. Furthermore, the liability under a signed blank cheque was discussed in the case of Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197, wherein the Apex Court observed:

“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the



cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

.....

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

34. Thus, this contention of the Petitioner that the impugned Cheque was merely a security cheque and could not have been presented, is untenable.

35. The Complainant has specifically alleged about their being existing debt/liability on 09.12.2015, when the cheque was presented to the Bank. Thus, the next logical question that needs to be answered pertains to existence of a “legally enforceable debt”.

II. Whether the cheque was in excess of the Legally Recoverable Debt:

36. The second issue is that whether a *legally enforceable debt* of Rs.6,82,416/- existed on 08.12.2015, the date the cheque was presented. In this regard we may make reference to the law in this regard.

37. Section 138 of the NI Act essentially criminalizes the dishonor of a cheque when it is issued by a person to another person *for the discharge, in whole or in part, of any debt or other liability.*



38. The Explanation to Section 138 clarifies that “debt or other liability” means a ***legally enforceable debt or other liability***.

39. It is an admitted case of the parties that Respondent *M/s Negolice India Ltd.* awarded a Work Order dated 28.02.2013 for Rs. 56,86,633/-to the Petitioner Company for supply and installation of GRC Grills” at Respondent’s M2K Victoria Garden, Azadpur, Delhi. The time of delivery and Completion Schedule was detailed therein.

40. The Clause IV provided for mobilization and timely completion, which reads thus *“you shall mobilise the site with adequate plant, machinery, tools, & tackles and provide necessary supervision for fulfilment of the contract and timely completion of the job as per the requirement.”*

41. The Clause V contained terms of payment which provided that 15% payment shall be made against advance cheque of equivalent amount along with the Indemnity Bond in the Complainant’s approval Format.

42. The Petitioner/Accused had also submitted an Indemnity Bond dated 11.03.2016 pursuant to this Work Order, the Clause 4 & 5 of which is significant and is extracted as under

“4. The Contractor hereby indemnifies and promises to keep the Owner harmless against any non-fulfilment of obligations of the Contractor under the Work Order and/or recovery/repayment of aforesaid advance payment given by the Owner to the Contractor and further undertakes to bear the entire liability for, and to keep the Owner indemnified and harmless against, any loss, damages, harm or prejudice caused by Contractor and/or any Sub-contractor/Labour appointed by Contractor or by any third party, acting for and/or on behalf of the Contractor and/or because of any act of omission or commission of the Contractor, including, but not limited to, delay or any) deficiency in providing services under the Work Order; and in the event of any such



loss, damages, harm or Prejudice being caused to the Owner, the Contractor expressly promises and agrees to pay to the Owner, "compensation including, without limitation, liquidated damages equal to the amount of aforementioned advance payment to cover those losses, damages and harm, whose value cannot be pre-assessed at this Stage."

"5. The Contractor, in pursuance of having agreed to pay aforesaid liquidated damages to the owner, hereby, deposits with the Owner. Cheque No. 723223 from Bank a/c 0188008700063801 drawn on PNB, Fountain Chowk, Gurgaon favouring the Owner for a sum of Rs. 6,82,416/- (Rs...), with an express and wilful promise and a clear understanding that in case the Owner suffers any loss, damages or harm, as specified in Clause 4 hereof, the final decision in respect whereof shall vest in the Owner, said cheque may be encashed by the Owner immediately thereupon, without giving any prior notice therefore to the Contractor, in discharge of the Contractor's then existing and outstanding liability for payment of liquidated damages."

43. It is not in dispute that a Mobilization advance of Rs.6,82,416/- had been given by the Complainant to the Respondent and that he had issued this impugned cheque for the same amount. In term of Clause 5 of the Indemnity Agreement, this Cheque could be presented by the Complainant for any loss, damages or harm suffered by him in execution of the Work Order.

44. What emerges from the rival pleadings is that only part of the Work got done while the Complainant was claiming *vide* emails dated 18.04.2014 that outstanding amount of Rs.3,61,847/- is due from the mobilization advance that was given by the Complainant. On the other hand, the Accused



Company was asserting that there was in fact only a sum of Rs. Rs. 69,647/- which was liable to be returned to the Complainant.

45. The case involves an undated PDC bearing No. 723223 for Rs. 6,82,416/- given by the Petitioner's Company to the Respondent Company. The undisputed fact is that the cheque was given as an "*advance cheque... against mobilization advance*" and/or a "*security/advance payment*".

46. The Indemnity Bond dated 08.03.2013, explicitly links the cheque to a potential *future* liability. **Clause 5** states the cheque is given with the understanding, that it *may be encashed* by the owner/Complainant Company without prior notice "*in discharge of the Contractor's then existing and outstanding liability for payment of liquidated damages,*" in case the owner suffers loss or damages, the final decision in respect whereof shall vest in the Owner. It was crystal clear that this was the undated cheque equivalent to the advance mobilization money given by the Complainant to secure any future liability in case the Work was not done and the final deciding authority was the Complainant. Admittedly, disputes arose and the contract was not completed.

47. According to the Complainant, the Petitioner had an outstanding liability of **Rs. 7,20,649/-** arising from the interpretation of the contract/Indemnity Bond. Consequently, the "security cheque" transformed into one that could be presented for discharge of a specifically financial obligation *which accrued in favour of the Complainant*.

48. The Petitioner has asserted that the outstanding amount was much less, i.e. Rs. 69,647/-, and the full cheque amount of Rs. 6,82,416/- was presented with *mala fide* intent. It is further claimed that the complainant itself in its various correspondence had asserted that an unutilized amount of



Rs. 3,61,847/- was due and therefore, the cheque was of much larger amount of Rs. 6,82,416/- than the outstanding amount; it would not attract offence under S.138 NI Act.

49. The Respondent however, in its final Legal Notice dated 22.12.2015 given to the Petitioner, had asserted that amount of Rs.3,61,847/- remained to be refunded by the Accused on which penalty @ 1% per day of the Contract value with the maximum of 5% Contract value for each day was liable to be imposed in addition to the interest and the amount due from the Complainant as of 08.12.2015, the date filled on the cheque, was Rs.7,20,641/-. It was also asserted that the Complainant was entitled to claim damages and expenses including the penalty resulting from breach of Contract.

50. There was thus, a dispute amongst the parties inter-se about the work which was done and the amount which was due and payable by one to the other.

51. For an offence under Section 138 of the NI Act to be attracted, the cheque must be for the discharge of a debt or liability, **and the debt must be equal to or greater than the amount of the cheque** presented. Whether the cheque amount was for the existing liability or an excess amount, is a matter of trial and cannot be considered at the stage of summoning.

Conclusion:

52. From the above narrative, it is evident that firstly this cheque was given to secure any loss that may be suffered by the Complainant. Furthermore, the Complainant has crystallized the outstanding liability under the Contract of Rs. 7,20,641/- and has consequently presented the Cheque of Rs. 682416/-. It cannot be at this stage, said that there is no



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legally enforceable liability. What exactly is the amount due and payable to the Complainant is a disputed fact which can be proved only during the trial.

53. In light of the aforesaid discussion, it is held that there is no merit in the present Petition to quash the Complaint or to set aside the Summoning Order dated 18.12.2018.

Relief:

54. **The Petition is hereby dismissed.**

55. The Petition along with pending Application(s), if any, is accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

NOVEMBER 11, 2025/RS