



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

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*Reserved on: 12<sup>th</sup> February, 2025*

*Pronounced on: 13<sup>th</sup> May, 2025*

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**CRL.M.C. 2030/2018, CRL.M.A. 7181/2018**

**1. M/s. SURYA PLOYMERS**

Through its Partner,  
Mr. Ravi Kumar,  
R/o 22/14, 11<sup>th</sup> Cross Street,  
Indranagar, Adayar,  
Chemiai – 600020

.....Petitioner No. 1

**2. Mr. RAVI KUMAR**

S/o S. Jayaraman,  
R/o 22/14, 11<sup>th</sup> Cross Street,  
Indranagar, Adayar,  
Chennai – 600020

.....Petitioner No. 2

**3. ARUNA CHITRA**

W/o Mr. Ravi Kumar,  
R/o 22/14, 11<sup>th</sup> Cross Street,  
Indranagar, Adayar,  
Chennai – 600020

.....Petitioner No. 3

Through: Mr. Ankit Sharma and Mr. Avneesh  
Arputham, Advocates.

versus

**M/S. NATURES ESSENCE PVT LTD**

80/8, Malviya Nagar, New Delhi -110017

Through its Authorized Representative

Shri Dev Bhola

.....Respondent

Through: Mr. Hitesh Kumar Singh, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**



## J U D G M E N T

### NEENA BANSAL KRISHNA, J.

1. The present Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter "Cr.P.C."*) for quashing of the Criminal Complaint bearing No. 471340/2016 under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 (*hereinafter "NI Act"*) and all proceedings emanating therefrom.
2. ***Briefly stated***, the complainant *M/s Nature's Essence Pvt. Ltd.* engaged in the business of manufacturing of *Herbal and Cosmetic Products*, appointed Petitioner No. 1 *M/s Surya Ploymers/Partnership Firm* and its Sister Concern *M/s Magikle Pharma Pvt. Ltd.* as its Super Stockist, from August-September 2009 onwards.
3. The Complainant asserted that Petitioner No. 2/Accused/Ravi Kumar in discharge of his admitted liabilities as well as penalties against the non-submission of C-Form, issued an Account Payee post dated Cheque 579701 dated 27.02.2016 in the sum of Rs.26,82,324/- drawn on Corporation Bank, Indira Nagar, Chennai-600020, which on presentation was dishonoured with the remarks '*Funds Insufficient*' vide Return Memo dated 09.03.2016.
4. The Legal Notice dated 16.03.2016 was served upon the Petitioners/Accused making a request to make the payment of the cheque amount within 15 days, which they failed to do. Instead, they gave a false and frivolous Reply dated 30.03.2016 denying their liability. Consequently, Complaint under 138 NI Act was filed against the Petitioners.



5. The Petitioners were summoned by the learned MM *vide* Order dated 07.11.2016. Aggrieved by the said Summoning Order, the Petitioners (Accused) have filed the present petition.
6. It is submitted that the summons issued petitioner No3 and the cognizance taken, ought to be quashed.
7. The maintainability of the Complaint itself is challenged on the **ground**, *firstly* that no proper Legal Notice of Demand has been served on the Petitioners. To make a person liable under S.138 NI Act, it is mandatory that the payee or for holder in due course of the cheque, makes a demand for the payment of the due amount of money by giving the Notice in writing to the drawer of the cheque within 15 days of receiving the information from the bank regarding the return of the cheque as unpaid.
8. It is asserted that the learned M.M. has failed to consider that in the present case, no demand Notice as mentioned under 138(b) NI Act, has been issued to Petitioner No. 1 i.e. the drawer of the cheque.
9. It is further submitted that in the Order dated 21.04.2016, it was specifically noted by the learned MM that no *Demand Notice* has been issued to Accused No. 1/Petitioner No.1, the Partnership Firm, despite which this aspect has not been considered while issuing summons *vide* Order dated 07.11.2016. Without sending a Legal Notice to the Firm, no opportunity has been afforded to it to respond or to make payment within 15 days. The Complaint under 138 NI Act is therefore, *void ab initio*.
10. Reliance has been placed on *Kirshna Texport and Capital Market Ltd. v. Ila A. Agrawal & Ors.*, (2015) 8 SCC 28 wherein the Supreme Court had categorically observed that an opportunity has to be given to the



drawer of the cheque to make payment and escape the penal consequences. Similar occupations have been made in the case of M.D. Thomas v. PS Jaleel and Others, (2009) 14 SCC 398 and in P.J. Agro Tech Limited and Ors. Vs. Water Base Limited, (2010) 12 SCC 146.

11. The **second ground** to challenge the Complaint under 138 NI Act is that blank undated signed Cheque in question bearing No. 579701 and another blank Cheque No. 579702, as non-CTS security cheques in 2002, were given by Petitioner No. 1 in 2009, pursuant to Stockist Agreement with the Respondent Company, as is customary in their trade.

12. No date or amount was mentioned on the cheques which have been filled in subsequently by the representative of the Respondent Company, in clear disregard to the instructions sent by Petitioner through Legal Notice dated 24.01.2013 seeking return of cheques in question.

13. Further, Passbook of Petitioner No. 1's Account from 12.11.2009 to 01.12.2009 from which the Cheque had been issued, clearly reflects that Cheque No. 579703-579718 were all encashed in 2009 itself which clearly reflect that the impugned two cheque Nos. 579701-579702 are from the same series, and had also been issued in 2009 and not in 2016 as has been alleged in the Complaint.

14. Learned M.M. has erred in issuing the summons to the Petitioners as Respondent Company has not produced any evidence whatsoever to prove any *existing debt or liability* against the Petitioners to have issued the cheque in question and that too, in the year 2016. The Respondent Company has not annexed any Ledger account to make good its submissions. The business between the parties ended in the year 2013 because of breach of



contract by Respondent Company. Instead of settling the account and making payment due to the Petitioner Firm, the Respondent Company has filed the Criminal Complaint under 138 N.I. Act, to harass and intimidate the Petitioners with the intent to extract money.

15. The Respondent Company has committed breach of trust as the Cheques given by Petitioner No. 1 Firm as security as per Trade Practice, have been misused. These cheques after the business ended in the year 2013, were liable to be returned which the Respondent Company failed to do despite Legal Notice dated 24.01.2013 sent by the Petitioners. The Respondent Company failed to reply to the aforesaid Notice, which implies that the facts stated therein are deemed to be accepted, affirmed and admitted by the Respondent Company for which reliance has been placed on Santosh Mittal vs. Sudha Dayal, 2014 (4) JCC 201; Kaluram vs. Sita Ram, 1980 RCR Note 44 and on Rangappa vs. Mohan, AIR 2010 SC 1898.

16. It is further stated that the *security cheque* is given to ensure fulfilment of liabilities arising out of contract obligation and is followed as a usual business and trade practice. It is not given in discharge of any debt or liability. Therefore, the main ingredient of the offence under 138 NI Act that the cheque dishonoured must have been given for discharge in whole or in part of a debt or other liability, has not been satisfied. Reliance has been placed on Sudhir Kumar Bhalla vs. Jagdish Chand, (2008) 7 SCC 137.

17. The **validity of the Legal Notice dated 21.01.2016 has also been questioned.** It is asserted that in the Legal Notice dated 21.01.2016 sent by the Respondent Company, the outstanding amount is claimed to be Rs.71,061/- whereas the Cheque amount has been filled as Rs.26,82,324/-.



The Respondent Company has deliberately concealed the earlier Notice dated 21.01.2016 and the Reply dated 22.02.2016 sent by Petitioner Nos. 2 and 3, which would have made the situation abundantly clear.

18. It is claimed that the entire proceedings before the learned MM, is an abuse of process of Court and meant to harass the Petitioners, who are located in Chennai. In Sita Ram vs. Special Judicial Magistrate, 1984 (2) Crimes 655 (All), it was observed that where reading of the Complaint makes it clear that it had been manufactured for the purpose of harassing the applicant and the allegations in the Complaint were not only improbable but also on the face of it, appear to be absurd, such proceedings are liable to be quashed.

19. It is further contended that Petitioners are resident of Chennai i.e. outside the territorial limits of Delhi. Section 202 Cr.P.C. mandates investigation to be carried out by learned M.M. before taking cognizance. This mandatory procedure has not been complied with and the entire proceedings are without the jurisdiction and ought to be quashed.

20. The summoning of **Petitioner No. 3/Arun Chitra** has been challenged on the ground that she is the wife of the Petitioner No. 2 and a Partner in Petitioner No.1's Firm, but had no role whatsoever in the present transaction and nothing has been alleged against her. In the Complaint as well as Legal Notice given by Respondent Company, no role has been attributed to the Petitioner No. 3 and she is also not a signatory to the cheque.

21. It is further submitted that even in the Legal Notice issued to Petitioner Nos. 2 and 3 by the Respondent Company, there is no averment that Petitioner Nos. 2 and 3 are *in charge and responsible for the affairs of*



*Petitioner No. 1.* In the absence of specific averment, no liability can be attributed to the Petitioners.

22. It is well settled that in the absence of specific averments regarding the role of a partner in the Firm, the said Partner cannot mechanically be made the Accused in the proceedings under Section 138 NI Act. Reliance has been placed on Monaben Ketanbhai Shah and Anr. vs. State of Gujarat and Ors., (2004) 7 SCC 15 wherein it was noted that where the person is a sleeping Partner who may be ladies and others, are not required to take part in the business of the Firm and may not know anything about the Business or the Firm, they cannot be held responsible for the conduct of the Business or the Firm. Reliance is also placed on Sham Sunder and Ors. vs. State of Haryana, (1989) 4 SCC 630 where similar observations have been made.

23. In the end, it is submitted that immense hardship and prejudice has been caused to the Petitioners, who have been put to trial without there being any *prima facie* evidence on record. It is, therefore, submitted that the Complaint Case under 138 NI Act pending trial before the learned MM be quashed.

24. It is thus, contended that learned MM has failed to appreciate that it is merely a civil dispute and no offence under 138 NI Act is made out. Reliance has been placed on Indus Airways Pvt. Ltd. and Ors. vs. Magnum Aviation Pvt. Ltd. and Anr., (2014) 12 SCC 539.

25. ***Learned Counsel for the Respondent*** has contended that the cheque for the outstanding liability admittedly has the signatures of Petitioner No. 2, which has been given in discharge of the legally recoverable debt; all the ingredients under 138 N.I. Act were *prima facie* established. The assertion



of the Petitioners that these were security cheques issued in 2009 or that the Petitioner No. 3 was not involved in day-to-day affairs of the Partnership Firm, are the specific defences set up by the Petitioners, which they are liable to establish during the trial.

26. There is no infirmity in the impugned *Summoning Order* and the present petition is liable to be dismissed.

27. **Submissions heard and record perused.**

**Legal Notice dated 15.03.2016 Not Addressed to Partnership Firm:**

28. The *first ground* of challenge to the maintainability of the Complaint is that the *Legal Notice dated 15.03.2016* is not valid as it was not duly served *upon* to the drawer of the cheque.

29. The law pertaining to the service of notice is clearly established. It is mandatory that the notice be served to the drawer of the cheque in order for the drawer to properly address the dishonour, and if the dishonour is accidental or unintentional, then the drawer may make the requisite payment within stipulated time and avoid prosecution for the offence under S.138 N.I. Act.

30. This aspect is of extreme significance as the *Legal Notice dated 15.03.2016* as well in prior Notice dated 21.01.2016, had been addressed to Ms. Arun Chitra and Mr. Ravi Kumar, though, they were described as partners of *M/s Surya Polymers*.

31. Pertinently, the Notice was not served upon the Partnership Firm but only on the two partners. It is pertinent to note that both, Mr. Ravi Kumar and Ms. Arun Chitra, had been issued Notice as partners of *M/s Surya Polymers*. The reference is also to the impugned cheque dated 27.02.2016,



which was issued for and on behalf of *M/s Surya Polymers* and signed by the Petitioner, Mr. Ravi Kumar as the authorised signatory.

32. It is no doubt correct that the partner of the Firm would not be liable under Section 138 NI Act without the partnership Firm being arraigned an accused, the partners cannot be made vicariously liable for the alleged commission of offence, as held by the Apex Court in the case of *Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd.* 2012(2) RCR (Crl.) 854 and *Himanshu vs B. Shivmurthy*, 2019 (3) SCC 797, but in the present case, though the Notice may not be happily worded but Mr. Ravi Kumar and Ms. Arun Chitra, were issued Notice only as partners of *M/s Surya Polymers*. To say that there was no Notice given to the partnership Firm would be a hyper technical view and is not tenable. It cannot be said that the Notice technically was not served on the Firm, but it is in fact the Firm, which had been served through two partners. Also, it cannot be overlooked that the Partnership Firm has been arrayed as Accused No.1.

33. *There is no merit in this contention of the Petitioners.*

**Cheque in question being a Blank Security Cheque issued in 2009:**

34. The *second aspect* is that the petitioners have claimed that the cheque in question is a *security cheque issued back in 2009* when they entered into business together.

35. This case pertains to dishonour of cheque dated 27.02.2016 bearing No. 579701 in the sum of Rs. 26,82,324/-. The defence of the Petitioners herein, is that the two cheques bearing Serial No. 579701 and 579702 had been given to the Complainant, at the time they entered into a business



transaction in the year 2009 as *security cheques* in terms of the business practice.

36. This fact of the cheques being furnished in the year 2009 is corroborated from the fact that the Petitioners *herein* had served a Notice in the year 2013 when the business deal came to an end between the parties seeking return of their two cheques, claiming to have been given as security. This also finds mention in the Reply dated 22.02.2016 given by the Petitioners to the first Notice dated 21.01.2016 sent by the Complainant, wherein the reference was made to the earlier Legal Notice of 2013 whereby these two security cheques had been demanded. The Petitioners have also explained that all the cheques issued from the same cheque book with the serial numbers of that cheque book, have all been utilised in the year 2009 while these two cheques remained since they were blank signed cheques given by the Petitioners towards security.

37. The entire transaction and the business practice as explained by the Petitioners, do *prima facie* show that these two cheques had given as security cheques way back in the year 2009. However, what exactly is the nature of security cheques.

38. The Apex Court in *Sripati Singh vs. The State of Jharkhand & Anr.*, 2021 SCC Online SC 1002, held that a cheque issued as security, pursuant to a financial transaction, cannot be considered as a worthless piece of paper. A security is given, deposited or pledged to ensure the fulfilment of an obligation undertaken. If a cheque is issued to secure repayment of a loan advanced and if the loan is not repaid on or before the due date, the drawee would be entitled to present the cheque for payment, and if such a cheque is



dishonoured, the consequences contemplated under Section 138 of the Act would follow. They are given in advance to meet any outstanding liability for which is not cleared or paid by the person issuing the cheque.

39. In the present case, there is a clear statement that aside from the outstanding amount, there was also VAT tax liability on account of non-submission of 'C' Forms by the Petitioners, payable by the Complainant.

40. The case of the parties is that the business transactions between the parties came to an end in the year 2012 and therefore, whatever was the outstanding liabilities, got crystallised and became payable. The security cheques are intended for this very purpose to satisfy any outstanding amounts, which are not paid by the Petitioners. Therefore, though initially these Cheques may have been given towards security, but were validly utilised towards the amounts that were outstanding from the Petitioners, according to the Complainant.

41. The cheque may have been undated with contents not filled but once a signed blank cheque is given, merely because the contents are filled in subsequently, would not invalidate the cheque, which provides that once the signed blank cheque is given, the drawer cannot subsequently take a plea of the cheques being security cheques.

42. Section 18 N.I Act provides such '*blank signed cheques*' as being valid instruments for discharge of a debt. It provides that "*If the endorser signs his name only, the endorsement is said to be "in blank..."*". Furthermore, the Apex Court in a catena of judgments has held that blank signed cheques also raise a presumption of a legal debt in terms of Section 139 of N.I. Act.



43. The Apex Court recently in *Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197 held that “*when a signed blank cheque is voluntarily given to a payee, towards some payment, the payee may fill up the amount and other particulars, and that will not invalidate the cheque.*” The same principle was reiterated most recently in *P.K. Uthuppu v. N.J. Varghese*, Crl.Rev.P. 1374/2010 in Order dated 07.11.2023, by the Kerala High Court.

44. *Therefore, the plea of the Petitioners that it was a blank signed security cheque which was misused, is clearly not tenable.*

**Validity of Legal Notice Dated 15.03.2016:**

45. *The next aspect pertains to the validity of the Legal Notice dated 15.03.2016 in view of there being a difference in the amount as stated in the first legal Notice dated 21.01.2016, and the Legal Demand Notice.*

46. In the First Legal Notice dated 21.01.2016, which was addressed to Mr. Ravi Kumar and Ms. Arun Chitra, both partners of *M/s Surya Polymers*, it was stated by the Complainant that they should clear pending payment of Rs.71,061/-, due from them. Additionally, it was mentioned that during the course of business, products worth Rs.1,13,63,172/- were purchased in the year 2012-2013 against ‘C’ Forms. Despite several reminders, the ‘C’ Forms had not been given to the Complainant, which is the legal liability of the partners of the Firm. Since they had failed to abide, thereby creating an obligation on the Complainant to submit the same with VAT Department failing which heavy tax liability and interest imposed by concerned VAT Department, in the sum of Rs.22,84,348/- till today, would have to be paid by Mr. Ravi Kumar and Ms. Arun Chitra,.



47. The *Petitioner Nos. 2 and 3* gave a *Reply dated 22.02.2016 to the Legal Notice* wherein a Reference was made to their earlier Notice dated 24.01.2013 *vide* which they had asked the Complainant, to return the two Security Cheques furnished by them to the Complainant in the year 2009; to take back excessively dumped stocks which are to be transferred to the newly appointed stockists and to settle the account after adjustment of all dues. It was further detailed that there were stocks worth more than Rs.85,00,000/- approximately and a market outstanding of Rs.75,00,000/- against an average sale of Rs.35,00,000/- DLP value. It was admitted that as on date, there was an outstanding amount of Rs.24,78,136/- on payment of which, the 'C' Forms would be released to the Complainant.

48. Thereafter, the cheque dated 27.02.2016 in the sum of Rs. 26,82,324/- was presented on 27.02.2016 and the same got dishonoured. The Legal Demand Notice dated 15.03.2016 was served by the Complainant on *Petitioner Nos. 2 and 3* i.e. Mr. Ravi Kumar and Ms. Arun Chitra wherein it was stated that a cheque drawn on Corporation Bank, Indira Nagar Branch, Chennai dated 27.02.2016 in the sum of Rs.26,82,324/- issued by the *Petitioners*, has been dishonoured for insufficiency of funds, on presentation. The *Petitioners* were called upon to deposit the amount within 15 days failing which the Legal action would be initiated against them.

49. In the first Legal Notice dated 21.01.2016, the Complainant had asserted that there was an outstanding liability of Rs.22,84,348/- till that date payable to the VAT Department, on account of non-production of 'C' Forms. The *Petitioners* have admitted in their *Reply dated 22.02.2016* that there is outstanding liability including non-furnishing of C-Forms.



50. From the aforesaid correspondence between the Parties, it is prima facie established that there was an outstanding legally enforceable liability on account of dues and non-submission of C-Forms by the Petitioner resulting in tax liability on the Complainant. It is quite evident that the cheque amount prima facie pertains to outstanding legally enforceable liability.

51. Now it is a matter of trial if there existed such liability and it cannot be considered at this stage of summoning.

**Legal Liability of Petitioner No.3/Ms. Arun Chitra**

52. The next aspect pertains to liability of Petitioner No. 3, wife of Petitioner No. 2, in regards to whom it has been contended that she had no role in the day-to-day affairs of the Firm and thus, cannot be held liable for the acts of the Firm.

53. It is not disputed that the Partner/Director of the concerned Firm/Company cannot be prosecuted unless they had specific role in the commission of the offence.

54. The Apex Court in Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 579 has observed that:

*“Vicarious liability under sub-section (1) to Section 141 of the NI Act can be pinned when the person is in overall control of the day-to-day business of the company or firm. ....Vicarious liability under sub-section (2) is attracted when the offence is committed with the consent, connivance, or is attributable to the neglect on the part of a director, manager, secretary, or other officer of the company.”*

55. However, it is pertinent to note that the Legal Notices sent by the Complainant were addressed to both the Petitioners. The Replies to the



same were given on behalf of both the Petitioners wherein it was not asserted that Petitioner No. 3/Ms. Arun Chitra was not involved in the day-to-day affairs of the Firm. Pertinently, this Firm has two Partners and merely on the basis of bald assertions that she had no role in the affairs of the Firm, cannot be discharged at the stage of summoning. It is a defence that the Accused is entitled to prove during the Trial.

56. *Therefore, the plea of Petitioner No. 3 that she had no role in the day-to-day affairs of the Firm is clearly not tenable.*

**Conclusion:**

57. In the light of aforesaid discussion, it is held that the Petitioners have been rightly summoned *vide* Order Dated 07.11.2016 and there is no ground for quashing the Complaint under Section 138 read with Section 142 of N.I. Act, cannot be quashed.

58. Any observations made here are not an expression on the merits of the case and the parties are at liberty to agitate their respective rights before the Trial Court.

59. The Petition is accordingly dismissed, along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MAY 13, 2025/va/RS**