



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

% *Reserved on: 02nd September, 2025*
Pronounced on: 17th December, 2025

+ **CRL.M.C. 452/2021, CRL.M.A. 2390/2021**

1. M/S DB SHAPRIYA CONSTRUCTION LTD.

Through its Director, Sh. Kishore Dhanji Shapriya
 Having its Registered Office at
 A-301, Titanium Square,
 Nr. Thaltej Cross Road, S.G. Road,
 Ahmedabad- 380054,
 Gujarat

2. SH. KISHORE DHANJI SHAPRIYA

Director, DB Shapriya Construction Ltd.
 R/o A-301, Titanium Square,
 Nr. Thaltej Cross Road, S.G. Road,
 Ahmedabad- 380054,
 Gujarat

3. SH. AMISH KISHORE SHAPRIYA

Director, DB Shapriya Construction Ltd.
 R/o A-301, Titanium Square,
 Nr. Thaltej Cross Road, S.G. Road,
 Ahmedabad- 380054,
 Gujarat

.....Petitioners

Through: Mr. Sunil J Mathews, Ms. Jyoti Chib,
 Ms. P.R. Mala, Advocates.

versus

A2Z INFRA ENGINEERING LTD.

(Formerly A2Z Maintenance & Engineering Services Ltd.),
 Having its Regd. Office at
 O-116, First Floor, Shopping Mall,
 Arjun Marg, DLF City, Phase-1,
 Gurgaon-122001 (Haryana)

.....Respondent



Through: Mr. Atul Kumar and Mr. Abhimanyu
Sharma Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India, for the quashing of *Complaint Case No. 13330 of 2018* under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (NI Act), along with the impugned Orders dated 03.06.2020 and 17.12.2020, summoning the Petitioners therein.
2. ***Briefly stated***, the ***Petitioner No. 1/M/S DB Shapriya*** is an Engineering, Procurement and Construction Public Limited Company engaged in the field of construction of oil & gas facilities and pipelines, road & building construction, and electrical distribution work. ***Petitioner No. 2/Sh. Kishore Dhanji Shapriya*** is an Indian-origin law-abiding citizen of the Republic of Tanzania. ***Petitioner No. 3/ Sh. Amish Kishore Shapriya*** is his son.
3. The Petitioners and the Respondent had been engaged in various Contracts wherein the Respondent was the Turnkey Contractor and ***Petitioner No. 1/DB Shapriya***, the EPC Contractor.
4. The Respondent had been awarded a Contract by the Bihar State Electricity Board (BSEB) on 30.03.2012 for the reconstruction and modernization of the distribution system in ***Ara and Buxar***. Petitioner No. 1/Company, represented by Mr. Dhiren P. Bhandari and the Respondent,



entered into a *Memorandum of Understanding (MoU)* on 20.12.2012 for this *Ara-Buxar Project*, on back-to-back basis.

5. As per *clause 3(b)(ii) of the aforesaid MOU*, Petitioner No. 1 furnished an *undated Cheque no. 593756 signed by Mr. Dhrien P. Bhandari, in the sum of Rs. 2,29,52,944 equivalent to 5% of the total contract value, as Performance Guarantee on behalf of Petitioner No. 1.*

6. Simultaneously, the Petitioners and the Respondent were engaged in a *Project in Kanpur*, regarding which a *Deed of Corporate Guarantee* was executed by the Respondent, in favor of Petitioner No. 1 on 31.12.2012 for an amount of Rs. 18,01,83,036/-. The Petitioners claim they completed the Kanpur Project and *were entitled to outstanding dues of Rs. 8,30,17,084/-*. On 18.03.2014, the Respondent issued a letter confirming this balance was payable to Petitioner No. 1, for which the Respondent issued a cheque on 01.02.2014. It is alleged that Mr. Dhiren P. Bhandari, the then Director of Petitioner No. 1, acting in connivance with the Respondent, deliberately withheld the encashment of this cheque, leading to the termination of his service on 31.03.2015 due to alleged fraudulent acts and misappropriation of funds.

7. Relations between the parties deteriorated when Petitioner No. 2 sent follow-up emails on 30.03.2018 and 09.04.2018, demanding the release of the outstanding dues relating to the Kanpur Project. In response, on 09.04.2018, the Respondent denied the existence of any legal liability or outstanding dues and threatened adverse legal action if the Petitioners persisted with their claims.

8. After completing all liabilities and exhausting all possibilities of peaceful resolution in respect of Kanpur Project, Petitioner No. 2 issued



follow up mails on 30.03.2018 and 09.04.2018. On 09.04.2018, to the shock and dismay of the Petitioners, the Respondent denied the existence of any legal liability or outstanding dues payable to the Petitioners under the Knpur Project. The Respondent further threatened legal action against the Petitioners, if the matter was pursued any further.

9. While the issues regarding the non-payment of dues in respect to the Kanpur Project continued, the Petitioner No. 1 continued to fulfil all obligations as per the MOU in respect of the *Ara and Buxar* Project. During the subsistence of the contract, the Petitioners did not receive any communication from the Respondent or from BSEB regarding deficiency in execution of the Ara-Buxar contract. The MOU contained specific clauses for the termination of the Contract; *Clause 13* could be invoked by the Respondent in case of *deficiency in performance*. The abovementioned Clause was not invoked during the subsistence of the aforesaid MOU, leading to the satisfactory completion of this Project.

10. The Petitioner has asserted that the Respondent has made a false and concocted claim regarding the imposition of penalty by BSEB to the tune of Rs.2.29.52,944/- for non-completion of the Project as per schedule, about which the Petitioner was never given any Notice. On the face of it, it seems highly improbable that the Respondent would be fined the precise amount by the BSEB, for which the undated cheque as Performance Guarantee, was issued by the Petitioner on 20.12.2012, in regard to this *Ara and Buxar* Project.

11. Following this exchange, the Respondent filled the date 23.04.2018 on the undated Security Cheque bearing No. 593756 that had been provided in 2012 under the Ara/Buxar MoU, and presented it for encashment at ICICI



Bank Ltd., New Delhi. The said cheque was dishonored and returned by the Bank on 27.04.2018 with the remarks “*Dormant Account*”.

12. The Respondent subsequently issued a statutory Demand Notice on 23.05.2018, which they claim was returned with the remarks “*Addressee left without address*”. The Respondent thereafter, filed the present Complaint Case under Sections 138, 141, and 142 NI Act, on 05.07.2018 before the CMM, Delhi.

13. The Ld. CMM issued summons to the Petitioners on 11.12.2019.

14. Aggrieved by the initiation and continuation of these criminal proceedings, the Petitioners/Accused filed the present Petition for quashing of the Complaint case.

15. ***The Petitioners has challenged the impugned Orders*** dated 03.06.2020 and 17.12.2020 summoning the Petitioners under S.138 NI Act, **on the ground** that the cheque in question was an undated Cheque for an amount equivalent to 5% of total award value as Performance *Guarantee*, in the sum of Rs 2,29,52,944, issued under the MOU. The said Cheque was not drawn or issued in pursuance of an existing or subsisting debt and was merely a *security to ensure performance of the contractual obligations*, thereby implying that *no liability existed at the time of issuance of Cheque*. Therefore, the Complaint based on dishonour of the Performance Guarantee Cheque, is not maintainable and bad in the eyes of law.

16. The Petitioners further asserted that both the Projects had concluded and the **Performance Guarantee had become inoperable**, which was to be returned upon completion of the Project. **Cheque presented for encashment by the Respondent, was not meant for discharge of any liability** whatsoever and was a mere *performance guarantee*. There being



no outstanding dues or a legal liability, Complaint under S.138 NI Act is liable to be quashed.

17. The Petitioner No. 1 further explains that the Parties were also engaged in another Project at Kanpur. The Petitioner had completed the work in that Project without any complaint and an amount of Rs.8.3 Crores was due to be paid to the Petitioner by the Respondent, for outstanding dues. The Petitioner had been reminding the Respondent of the existing debt under Kanpur Project and had sent follow up mails on 30.03.2018 and 09.04.2018.

18. However, instead of paying the outstanding dues of the Petitioner, it has been wrongly hoisted with the Complaint under S.138 NI Act, which is liable to be quashed.

19. *Thus, it is prayed that the present Petition, be allowed.*

20. ***The Petitioners in their Written Submissions*** had asserted that the Complaint Case is liable to be dismissed on two grounds. **Firstly**, the cheque had been issued by the Accused in the sum of Rs.2,29,52,944/- towards their ***future liabilities***, if any, on account of their performance in the project.

21. It is asserted by Petitioner that the cheque in question was issued by Mr. Dhrien P. Bhandari, the then Director of Petitioner No. 1, who had been actively involved in causing wrongful losses to Petitioner No. 1 in connivance with the Respondent. He was authorised signatory of Petitioner No. 1 and had signed the performance cheque but has not been made a party to the present Complaint.

22. The Supreme Court in the case of *Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539, had held that if a cheque is issued as an advance payment of purchase of goods and for any reason, Purchase



Order is not carried to its logical conclusion either because of its cancellation or the material of goods were not supplied, the cheque cannot be held to have been drawn for an existing debt or liability.

23. Reliance is also placed on Nikhil P. Gandhi v. State of Gujarat, (2016) 197 Comp Cas 50 wherein it was held that where the cheque was not for a valuable consideration when it was drawn, then it would amount to be a cheque towards security and would acquire consideration only on account of mutual contingency.

24. It is submitted that the cheque in question was the Performance Guarantee cheque and it could not be invoked to satisfy an alleged **legally enforceable debt or liability**. Reliance has been placed on Womb Laboratories Pvt. Ltd. v. Vijay Ahuja and Another, 2019 SCC OnLine SC 2086 and Kirti Premraaj Jain v. Moser Baer Clean Energy Ltd. and Another, (2017) 1 HCC (Del) 259.

25. Reliance is also placed on Joseph Vilangdan v. Phenomenal Healthcare Services Ltd. (2010) SCC OnLine Bom 1020 to assert that a security deposit is not towards the discharge of any debt or liability. Reference is also made to Shantaram Namdeo Sathe v. State of Maharashtra and Anr. (2019) SCC OnLine Bom 4354 and Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578 wherein the Supreme Court reiterated that the cheque must be in discharge of a legally enforceable debt. Reliance is also placed on Shanku Concretes Pvt. Ltd. v. State of Gujarat, 1999 SCC OnLine Guj 366 and Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd., 1998 SCC OnLine Mad 704 where similar observations were made. It is, therefore, submitted that the Complaint along with the Summoning Order is liable to be quashed.



26. It is further contended that *there is no specific rule attributed to Petitioner No. 2/Sh. Kishore Dhanji Shapriya and Petitioner No. 3/Sh. Amish Kishore Shapriya* except a bald statement that they are Directors and Additional Directors and are responsible for day-to-day affairs and involved in the management of the of Accused No. 1 Company.

27. In support of the contention, reliance has been placed on SMS Pharmaceuticals Ltd. v. Neeta Bhalla (2005) 8 SCC 89 wherein the Apex Court held that there must be clear, unambiguous and specific allegations against the person who are impleaded as an Accused that they were in charge of and responsible to the Company, in the conduct of its business and the material time when the offence was committed.

28. It is reiterated that the Complaint was not maintainable as there was no legally enforceable debt; on account of non-impleadment of Mr. Dhrien P. Bhandari who had signed the MOU and the Performance Guarantee and also because the impugned cheque had not been issued as a performance guarantee and not for discharge of a debt.

29. It is therefore submitted that the present Complaint is liable to be quashed.

30. ***The Respondent in the written submissions***, took the ground that the present Petition has been filed only by a Company and two Directors while the other two Directors who were a party to the Complaint under Section 138 NI Act, have not been made a party to the present Petition. It amounts to partial quashing of the Complaint, making the present Petition, not maintainable.



31. It is contended that the Petitioner has not availed appropriate remedy by challenging the summoning Order where questions of facts and law are involved and the present Petition is liable to be quashed.
32. The Petitioners' primary contention that the cheque was issued merely as a 'security' or 'performance guarantee,' is not tenable at this initial stage.
33. Reliance is placed on the judgment in Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Ltd. (2016), wherein the Apex Court categorically held that where a cheque is given as security, it becomes enforceable **if the debt or liability crystallizes** on the date of presentation, and the provisions of Section 138 will be attracted.
34. Further, reliance is placed on Sripati Singh vs. State of Jharkhand (2021), wherein the Apex Court reiterated this principle, holding that a cheque issued as security for a loan or performance, when dishonoured after when the liability has become due, attracts the offence.
35. It is submitted that the present case is exactly where the liability stands crystallized as the Petitioners failed to adhere to the MOU, leading to the imposition of a penalty of **Rs. 2,29,52,944/-** by BSEB, thereby transforming the cheque given towards the *Performance Guarantee* into a present, legally enforceable debt.
36. Furthermore, the Petitioners' admission of issuing the cheque and the subsequent dishonour; and the **statutory presumptions** under **Section 118(a)** and **Section 139** that the cheque was issued for consideration that the cheque was issued in discharge of a legally enforceable debt or liability, create a case **in favour of the Respondent.**



37. The burden to **rebut** these statutory presumptions by adducing cogent, reliable and convincing evidence **during the trial** lies squarely upon the Petitioners. Further, it is a well-settled principle of law that the **defence of the accused cannot be looked into** or considered in a quashing Petition under Section 482 Cr.P.C.

38. The disputed questions of facts or mixed questions of fact and law, such as: “*whether there was a legally enforceable debt or liability on the date of presentation?*”, “*whether the penalty was validly imposed by the BSEB.*”, and “*the quantum of losses or dues owed in the Kanpur Project,*” cannot be considered at this stage. The merits of the defence, including whether the cheque was issued as ‘security’ or whether the contractual obligations were met, are purely **disputed questions of fact** that can only be proved during the trial. These triable issues disentitle the petitioner from seeking quashing of the Petition.

39. The present petition is merely an attempt by the Petitioners to introduce and prove their defence prematurely, which must be rejected.

40. *It is, therefore, submitted that the Complaint along with the Summoning Order is liable to be quashed.*

Submissions Heard and Record Perused.

41. At the threshold, a **preliminary objection** is raised by the Respondent regarding the *maintainability of the present Petition* on the ground of non-joinder of necessary parties, i.e. Accused No. 2/Ashish Shrivastava and Accused No. 5/Dipackumar Chandrakant Kotak, who were designated as Additional Directors of the Petitioner No. 1 Company, who



were made party in the Complaint under S.138 NI Act, but are not Party to the present quashing Petition.

42. In the instant case, the Petitioner No. 1/M/s **DB Shapriya Construction Ltd.**, a juristic person, was the drawer of the Cheque through its Director. It is a settled principle of law that the Company is the principal offender in such cases. The liability attached to the Directors, including the present Petitioners No. 2 and 3, as well as the non-petitioning Accused Nos. 2 and 5, is strictly vicarious in nature, arising solely by operation of Section 141 of the N.I. Act.

43. The presence of the principal offender, the Company/Petitioner No. 1, is sufficient for this Court to examine the validity of the impugned Complaint and the Summoning Order. The Company, being the Principal accused, has the independent right to seek the quashing of proceedings that are allegedly an abuse of the process of law.

44. This right cannot be defeated or curtailed merely because certain other co-accused directors, whose liability is contingent upon the liability of the Company, have not joined the present Petition. Since the Company has filed the Petition for quashing, its liability which forms the basis of the entire Complaint, can be fully assessed in these proceedings; the non-joining of Accused Nos. 2 and 5 in the present Petition for quashing, is not an impediment to the maintainability of this Petition. This argument is legally unsustainable and merits rejection.

I. Whether the Cheque was Dishonored for Insufficiency of Funds:

45. The Petitioner has contended that that the Complaint under S.138 NI Act is not maintainable as the cheque was dishonoured due to “*Dormant Account*” and not “*insufficient funds*”.



46. While considering this contention, reference may be made to the case of *Laxmi Dyechem (M/s.) v. State of Gujarat & Ors.*, (2012) 13 SCC 375, wherein it has been held that if the cheque is dishonoured with endorsement “signatures do not match”, the said endorsement is the species of the genus, “amount of money in account is insufficient”. Thus, it has to be held when cheque returned unpaid, on presentation for collection, noting any reasons other than “funds insufficient” in the account of the drawer/payer of the cheque, the said reasons are the species of the genus, “amount of money in account is insufficient”.

47. The Kerala High Court in *Premjithlal V.P. vs. Peter John Aswez*, 2022:KER:73248 while applying the above said legal proposition in the facts, when a cheque was dishonoured for the reason “account dormant”, observed that *“it could not be held that when the cheque was dishonoured with endorsement ‘account dormant’ the same would not attract an offence under Section 138 of the N.I Act.”*

48. The Court referred to the definition of the word ‘dormant’ and held as under:

“‘Dormant’ literally means ‘inactive’ or ‘torpid’. Therefore, when cheque returned unpaid with endorsement ‘account dormant’, it means ‘account inactive’ for want of funds. It is difficult to lay down a proposition that, when the account is inactive, there is sufficient amount outstanding in the said account. Therefore, it has to be held that even dishonour of cheque with endorsement ‘account dormant’ also is the species of the genus, ‘amount of money in account is insufficient’.”

49. To embolden the argument the Court referred to Section 146 of the N.I Act. The same is extracted as under:



“146. Bank’s slip prima facie evidence of certain facts—
The Court shall, in respect of every proceeding under this Chapter, on production of Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.”

50. A bare perusal of the provision reveals that the presumption under Section 146 would apply in relation to a cheque which was dishonoured for the reason “account dormant” also.

51. ***Thus, this contention of the Petitioner is untenable.***

II. Whether Petitioner No.2/Sh. Kishore Dhanji Shapriya and Petitioner No.3/Sh. Amish Kishore Shapriya are Liable to be Discharged:

52. **The next contention** of the Petitioners is that Petitioner No. 2 & 3 cannot be held vicariously liable as they are not responsible for the day-to-day affairs of the Company.

53. The Complaint explicitly avers that Accused Nos. 2, 3, 4, and 5 (including the Petitioners Sh. Kishore Dhanji Shapriya and Sh. Amish Kishore Shapriya) are **responsible for the day-to-day affairs** and involved in the management of the Company.

54. It has been held by the Apex Court in the recent case of HDFC Bank Ltd. vs. State of Maharashtra and Anr., 2025 INSC 759, that criminal proceedings under Section 138 N.I Act against a Company Director cannot be dismissed solely because the Complaint does not precisely replicate the wording of Section 141. The Court underscored that the essence of the allegations is more important than their form. If the Complaint sufficiently



indicates that the Director was actively involved in the Company's day-to-day operations and played a role in the transactions in question, this is enough to meet the threshold for vicarious liability under Section 141(1) NI Act, even if the statutory expression "*in charge of and responsible for the conduct of the business*" is not quoted verbatim.

55. In the present case, the Petitioner itself has asserted that the Petitioners No. 2 and 3 are Directors and Additional Directors. In the light of the aforesaid judgments, it is evident that being the Directors and in the light of the averments that they were involved in the day-to-day affairs and management of the Company, it cannot be said that they are not vicariously liable for the affairs of the Company.

56. The onus is on the Directors to show that they had no role in the management of the Company, which is a matter of trial. ***Thus, this contention is not tenable for the quashing of the Complaint.***

III. Whether Mr. Dhrien P. Bhandari was a necessary party to the Complaint under S.138 NI Act:

57. ***The next contention*** of the Petitioners is that Mr. Dhrien P. Bhandari, the former Director of Petitioner Company, who was a signatory to MOU, has not been made a party. However, this contention on the face of it is not tenable as the Petitioner itself has claimed that Mr. Dhrien P. Bhandari has connived with the Respondent-Complainant and had mis-conducted itself on account of which, he was removed from the position of Directorship on 31.03.2015.

58. Reliance is placed on the case of *DCM Financial Services Ltd. v. J.N. Sareen*, (2008) 8 SCC 1, wherein the Apex Court held that a Director who



resigned prior to the cheque's dishonor, cannot be held liable under Section 138, as he had no control over the Company's affairs at the relevant time.

59. Mr. Dhrien P. Bhandari may have been a signatory to the MOU but at the time when the liability has arisen, he no longer was the Director when the cause of action arose by presentation of Cheque and its dishonour.

60. *Therefore, Mr. Dhrien P. Bhandari was not a necessary or a proper party to the Complaint and this ground also cannot be the basis of quashing the Complaint case.*

IV. Performance guarantee and Legally recoverable Debt:

61. The core of the Petitioners' legal challenge is that the undated cheque was issued as a Performance Guarantee (security) and there was ***no legally enforceable debt existing as on the date of the impugned Cheque*** and thus, the Complaint under Section 138 NI Act, is not maintainable. It is further contended that the Performance Guarantee could not have been invoked towards the alleged legally enforceable liability.

62. It is the undisputed fact that Petitioner No.1/M/s DB Shapriya Construction Ltd. /accused Company entered into a MoU dated 20.12.2012 with the Complainant, in respect of reconstruction.

63. Clause 3(B)(i) of MoU dated 20.12.2012 provided for giving Performance Guarantee by Petitioner No.1 Company by way of post-dated cheque equivalent to 5% of total awarded value amounting to Rs.2,29,52,944/- (Rupees Two Crore Twenty Nine Lakh Fifty-Two Thousand Nine Hundred Forty-Four Only).

64. The relevant clause of the performance guarantee is extracted as under:



“The DBSCL will give performance guarantee in form of a post dated cheque equivalent to 5% of total award value amounting to INR 22,952,944.00 (INR Two Crore Twenty Nine Lacs Fifty Two Thousands Nine Hundred and Forty Four Only).”

65. A Performance Guarantee is a legal commitment, ensuring that a contractor, supplier, or service provider fulfils their contractual obligations. It protects the project owner or client by providing financial compensation if the contractor fails to perform according to the agreed terms.

66. The guarantee may be provided by way of a security cheque, which becomes due on the contingency of the failure in performing the contract as per the agreed terms.

67. The Supreme Court in Sampelly Satyanarayana Rao (supra) clarified that if a cheque is issued as security for a *contingent* liability, and that contingency occurs i.e., the liability becomes due, the cheque, on presentation, is deemed to be against a **‘legally enforceable debt’**.

68. The Apex Court in Sripati Singh (supra) has reinforced that a security cheque, when presented after the debt becomes recoverable, is covered by Section 138.

69. As per averments made in the Complaint, during subsistence of the contract with BSEB, which had then awarded the contract to the Complainant, imposed a penalty of Rs.2,29,52,944/-, which was recovered from the Bills of Complainant Company. Clause 10 of the MoU reads as under:

“10. DBSCL shall bear all the penalties and liquidated damage or any other damages imposed by BSEB as the case may be for slow progress of work, for any other reason, for not maintaining the milestones fixed or committing any



default in the workmanship and non-compliance of the approved specifications and terms and conditions as mentioned in the tender document/contract, for the effective timelines and portion as attributable to DBSCL. Whereas DBSCL shall try & put up earnest efforts to complete the Project in contractual completion date, however, any penalties levied because of the lost time in between award of contract by BSEB to A2Z and award of contract to DBSCL by A2Z upto delay of three months from the date of contact, the same shall not be levied on DBSCL.”

70. In the present case, the Respondent clearly avers that the Petitioners' non-performance, led to the BSEB imposing a penalty of Rs. 2,29,52,944/-. Since the penalty had been imposed, it was recoverable from the accused Company/M/s *DB Shapriya Construction Ltd.*, in terms of MoU dated 20.12.2012.

71. Imposition of the Penalty **crystallized the contingent liability** into a legally enforceable debt towards which the performance guarantee was invoked.

72. Consequently, the *performance guarantee* cheque of Rs.2,29,52,944/- was presented for encashment. The purpose and scope of Performance Guarantee cannot be considered at this stage and the Petitioner may raise these contentions during the trial.

73. *Prima facie*, from the averments made in the Complaint, it is evident that the cheque got presented for the legally enforceable debt which arose under MOU.

74. The petitioner's contention that it is highly improbable that the BSEB would impose penalty of same amount as the amount of Performance Guarantee, cannot be considered at the stage of Summoning, but is a defence which can be best appreciated, after the evidence is led by both the parties.



At this stage it is only conjectural and speculative contention, which is not tenable at this stage.

75. The Apex Court has repeatedly held that the **defence of the accused cannot be considered** in a Petition for quashing a Complaint under Section 138 of the NI Act.

76. Whether there existed any liability or not, is again a **triable issue** that cannot be dismissed at the threshold.

77. *Thus, this ground is not tenable at this stage.*

V. Whether Complaint Discloses Cause of Action:

78. The only ground for quashing at this stage is if the allegations in the Complaint, taken at face value, do not constitute an offence. The present Complaint clearly fulfils all statutory requirements of Section 138.

79. In the face of the admitted issuance of the cheque and its dishonour, the **statutory presumptions** under **Section 118(a)** (consideration) and **Section 139** (legally enforceable debt or liability) are active in favour of the Respondent. The Petitioners bear the legal and evidential burden to rebut this presumption.

80. This rebuttal is a matter of evidence at trial, not argument in a quashing Petition.

81. The reliance on case law establishes that a security cheque, once presented due to the failure of the underlying condition, can constitute a legally enforceable debt:

82. Further, the defense, which has been raised by the Petitioner/Accused, is that there was another project in Kanpur, which was successfully



completed by them, under which the Accused was entitled to the recovery of Rs.8.3 crore.

83. The Complainant had issued a cheque dated in this regard for the said amount. Mr. Dhiren P. Bhandari, erstwhile Director of the Accused Company, connived with the Complainant Company and did not present the cheque for encashment. There was thus a recovery of this amount due from the Complainant, in Order to square it up, the present Complaint has been filed with *mala fide* intention, only to counter the recovery of the amount, to which the accused is entitled.

84. This defense is again a matter of trial and cannot be considered at this stage when the Petitioners have been summoned for the offence under Section 138 NI Act.

85. Next, it is contended on behalf of the Petitioners that even if any penalty was imposed by BSEB upon the Complainant Company, there is no cogent document or reason for imposition of the penalty disclosed in the Complaint. However, this again is a matter of trial, whether any penalty got imposed by BSEB on the Complainant or the same was validly sought to be recovered from the Petitioners by presenting the performance guarantee cheque.

86. Thus, from the discussion there are some contentious, disputed questions of fact and mixed questions of law and fact that **must be decided during trial** and but the same cannot be decided by this Court under Section 482 Cr.P.C. The questions which are disputed are as under:

- i. Whether the project was completed satisfactorily or if the Petitioners abandoned the project and caused damages.*



- ii. *Whether the penalty of Rs. 2,29,52,944/- was genuinely imposed by BSEB and whether the amount was correctly recovered from the Complainant's bills.*
- iii. *The Petitioners' claim regarding outstanding dues in the Kanpur project (Rs. 8.3 Crores) is a separate, **civil debt** that cannot be used to negate the criminal liability under the NI Act in the present case*

87. Therefore, the contentions raised by the Petitioners in present Petition for quashing of Summoning Orders dated 03.06.2020 and 17.12.2020 have not merit. The grounds for quashing, as agitated in the present Petition, in fact, are challenged on the merits of the Complaint and the defence of the Petitioners, which can be proved only during the trial.

88. There is no ground for quashing of Complaint under Section 138 NI Act.

Order:

89. In view of the aforesaid discussion, it is held that there exists no ground for quashing of the Complaint. The **Petition is accordingly, dismissed.**

90. It is, however, made clear that the observations made herein are not an expression on the merits of the case.

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

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 17, 2025

R