



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

% *Reserved on: 16th April, 2025*
Pronounced on: 28th June, 2025

+ **CRL.M.C. 150/2012**

STATEPetitioner

Through: Mr. Utkarsh, APP for the State with
SI Jogender, PS Shalimar Bagh.

versus

1. **HARISH BINDAL**
S/o SHRI NUNIA MAI
R/6 KATH MANDI, HISAR

2. **TARUN BINDAL**
S/o SHRI HARISH BINDAL
R/O KATH MANDI, HISAR

.....Respondents

Through: Mr. Hrishikesh Baruha, Mr. Anurag
Mishra and Mr. Utkarsh Dwivedi,
Advocates.
Mr. Jeevesh Bindal, Advocate for R-1
& R-2.

+ **CRL.REV.P. 408/2011, CRL.M.A. 17833/2013 & 3576/2022**

PURAKH CHAND MINDA
Managing Director,
Jay Switches India [Pvt.] Limited
A-67/2, G.T. Karnal Road,
Industrial Area, Delhi

.....Petitioner

Through: Mr. Hrishikesh Baruha, Mr. Anurag
Mishra and Mr. Utkarsh Dwivedi,
Advocates.

versus

1. **STATE**



2. **HARISH BINDAL**
S/o NUNIAMAL BINDAL
R/o KATH MANDI,
HISSAR, HARYANA
3. **TARUN BINDAL**
S/o HARISH BINDAL
R/o KATH MANDI,
HISSAR, HARYANA

.....Respondents

Through: Mr. Utkarsh, APP for the State with
SI Jogender, PS Shalimar Bagh.
Mr. Jeevesh Bindal, Advocate for R-2
& R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.M.A. 6657/2023 in CRL.M.C. 150/2012

1. Application under Section 482 Cr.P.C. has been filed by the Complainant Company *M/s. Jay Switches (India) Pvt. Ltd.* through its Director Mr. Kunal Minda, to be given an opportunity of being heard since it is the Company, which is the actual victim in the present case.
2. It is submitted that FIR No.542/2005 under Sections 379/467/468/506/420/34 IPC was registered against Respondents on Complaint pursuant to the directions of the learned MM in CC No.67/2005 filed under Section 156(3) Cr.P.C. by the Petitioner *M/s. Jay Switches (India) Pvt. Ltd.* through its Director Mr. Purakh Chand Minda (P. C. Minda). On completion of investigation, the Chargesheet was filed against the Respondents. Sh. P. C. Minda died on 04.11.2018 and the matter on behalf of the Company was being pursued by Mr. Kunal Minda before the learned MM as well as before



learned ASJ. Therefore, permission has been sought by him to represent the company in present Petitions.

3. Reliance has been placed on *Jagjeet Singh & Ors. vs. Ashish Mishra @ Monu & Anr.*, 2022 (9) SCC 321, wherein, it was observed that the legislature has given a wide and expansive meaning to the expression 'victim' which means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged. The victim therefore, has a right to come forward to participate in a criminal proceeding even though the same are being undertaken on behalf of the State.

4. The Application is supported by the Board Resolution dated 12.02.2023 authorising Mr. Kunal Minda to represent the Company. The Applicant had represented the Complainant Company before the learned MM as well as before learned ASJ.

5. *No formal Reply* has been filed by the Respondents to this Application.

6. Considering that the complainant was M/s. Jay Switches (India) Pvt. Ltd. though was earlier represented by its Director Mr. P. C. Minda, but is being representing by Mr. Kunal Minda after the demise of Mr. P. C. Minda, he is hereby, permitted and authorised to represent the Complainant Company in the present Petition.

7. Application is accordingly, allowed and disposed of.

CRL.M.C. 150/2012 and CRL.REV.P. 408/2011

8. These two Petitions under Section 482 Cr.P.C. have been filed on behalf of the State and the Complainant Company M/s. Jay Switches (India) Pvt. Ltd. respectively, to challenge the Order dated 02.08.2011 of learned



District and Sessions Judge, Delhi, who has discharged the Respondents for the offences under Sections 467/468/34 IPC and Harish Bindal of the additional Charge under Section 379 IPC .

9. The *facts in brief* are that on 18.12.2003, Mr. P. C. Minda along with his son-in-law / Respondent No. 1 Harish Binal went to AL-market, Shalimar Bagh in his car bearing No.DL-8C-J04214 and went inside the market to purchase the medicines. When he returned, he found his bag containing Stamp Papers of Rs.2/-, Rs.5/-, Rs.10/- and Rs.100/-, his Passport, blanked signed cheques and other valuable documents, were missing. He got a NCR dated 18.12.2003 registered at PS: Shalimar Bagh with regard to the loss of his bag containing his valuables. The Public Notices were issued in the Newspaper on 26.12.2003 about the missing of the valuables in his bag. On 26.03.2003, he also gave intimation to his Bank regarding the missing of his cheques bearing No. 830615 and 830616 with instructions to *stop the payment* of the said cheques.

10. On 07.02.2005, his bank officials informed him about the presentation of the aforesaid two cheques for encashment, but on the basis of instructions given by him, the payment against the said Cheques had been stopped.

11. The *Complainant then filed a Complaint before the Ld. MM on 21.03.2005*. He made the allegations that the valuables and his bag got stolen by Respondent No. 1 Harish Bindal, who forged the two cheques which only had the signatures of the Complainant. One cheque bearing No. 830615 was forged for an amount of Rs.1 crore in favour of Respondent No. 1 Harish Bindal, while the second Cheque No. 830616 was forged for an amount of Rs.2.5 crore in favour of Respondent No. 2, Tarun Bindal.



12. The Complainant alleged that these were the blank signed Cheques which had been stolen by Respondent No. 1 Harish Bindal, on 18.12.2003, who had accompanied him in his car to Shalimar Bagh Market. He had not suspected Respondent No. 1 Harish Bindal, who is his son-in-law, of this alleged theft on the date when he found his bag and valuable documents missing. He came to know that missing cheques had in fact, been stolen by Respondent No. 1 Harish Bindal, when he got the intimidation of cheques being presented by Respondent Nos. 1 and 2 / Harish Bindal and Tarun Bindal for encasement. He then came to know about the cheating and forgery and filed a Complaint under Section 156(3) Cr.P.C. before the learned MM.

13. ***On the directions of the learned MM, present FIR No.542/2005 was registered on 03.07.2005.***

14. The investigation was duly carried out by the Police and ***Charge Sheet was filed before the learned MM, on 16.10.2008.***

15. *Learned MM in his detailed Order dated 21.05.2011 referred to the NCR, bank letters and Hand-Writing Expert Report to prima facie conclude that offences under Sections 467/468/34 IPC were made out against both the Respondents. Additionally, offence under Section 379 IPC was prima facie made out against Respondent No. 1 Harish Bindal.*

16. ***Respondent No. 1 Harish Bindal, aggrieved by the aforesaid Order on charge, filed C.R. No. 51/2011 before the learned District and Sessions Judge, Rohini Courts, Delhi, who in his Order dated 02.08.2011, in detail considered the apparent contradictions in the case of the Complainant and the NCR dated 18.12.2003. He further relied upon the Hand-Writing Expert's Report to conclude that the cheques were signed by Mr. P.C. Minda***



which led to a legal presumption against him under the NI Act. It was held that no *prima facie* case was made out against the Respondents and consequently, discharged them for the alleged Offences.

17. *Aggrieved by the aforesaid Order of discharge dated 02.08.2011, present two Petitions have been filed by State and Complainant Company M/s. Jay Switches (India) Pvt. Ltd. respectively.*

18. ***The main ground of challenge*** is that at the Stage of Charge, a broader view has to be taken while analysing the statements of witnesses. The *prima facie* involvement, if disclosed, is sufficient for the purpose of framing of Charge. The contents of the Chargesheet *prima facie* disclosed sufficient material for the framing of Charges against the Respondents as has already been observed by the learned MM in his Order dated 21.05.2011.

19. Reference has been made to the case of **Tuncay Alankus and Ors. vs. Union Of India & Ors.**, 2000 CRL. L. J. 3280, wherein it was observed that where the material collected shows strong suspicion which lead to the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged, it would be appropriate to frame the Charge. Reliance has also been placed on **Romesh Sharma vs. State**, 2001 I AD (Crl.) DHC 304 and **Sajjan Kumar vs. C.B.I.**, 2010 (9) SCC 368, wherein similar observations were made.

20. It is contended that Learned ASJ has failed to appreciate the well settled principles of law that at the stage of framing of Charge, sifting and weighing of evidence cannot be done and where the evidence / statements made by the complainant / prosecution witnesses under Section 161 Cr.P.C. and the Chargesheet filed by the Prosecuting Agency, if remained un-rebutted and un-conflicted is believed to be true, the accused cannot be



discharged of the offence. The *prima facie* perusal of the material on record and the Chargesheet would show great suspicion against the Respondents; thus, there was no occasion for them to be discharged by the learned ASJ.

21. It is submitted that the Respondents had defended the cheques by relying on the alleged Covering letters dated 25.09.2003, which had been allegedly sent along with two cheques to the Respondents. It is asserted that the FSL report has clearly opined that the body of the cheques, i.e. date, amount and the name of drawee of the cheque, has been filled by Respondent No. 1 Harish Bindal, thereby, giving rise to a grave suspicion against both the Respondents. If the cheques had been actually issued by the Complainant, where was the question of just giving blank cheques without filling up the details.

22. It is further contended that the Respondents have relied on MoU dated 01.04.2001, but the two contesting witnesses, Mr. S. K. Mangla and Mr. Ajay Kumar Bindal, in their statements recorded under Section 161 Cr.P.C. have stated they had signed the said MoU at the instance of Respondent No. 1 Harish Bindal and they had not seen the Complainant signing the said MoU. Therefore, the authenticity of this MoU dated 01.04.2001 is suspicious and sufficient for corroborating the assertions of the Complainant that the said documents have been forged by the Respondents.

23. The Complainant has denied the execution of the MoU, the cheques and Covering Letter, except having admitted his signatures, which find corroboration from the FSL report. The genuineness or non-genuineness of documents could not have been presumed without there being a trial and the parties being given an opportunity to lead their respective evidence. It is



therefore, submitted that the impugned Order of discharge be set aside and the case be put up for trial.

24. ***Respondents in their detailed reply*** have explained that Respondent No. 1 Harish Bindal and Respondent No. 2 Tarun Bindal are son-in-law and grandson respectively, of the Complainant P. C. Minda. Mr. P. C. Minda was short of finances in his business and from time to time took the help of the Respondents. A total loan of Rs.66 lacs had been given from time to time through account payee cheques by the Respondents to P. C. Minda and his son Deepak Minda, upto 31.03.2001. Out of this amount, P. C. Minda admitted the loan to the tune of Rs.64 lacs before the learned Trial Court as well as the Revisional Court.

25. The Complainant company M/s. Jay Switches (India) Pvt. Ltd. through its Director Mr. P. C. Minda had entered into a written Agreement / MoU dated 01.04.2001 on a Stamp Paper of Rs.5/-, which he had purchased on 20.12.2000, for Consultancy and Development of new products with Respondent No. 2 Tarun Bindal who is a Mechanical Engineer, for the augmentation of business of the Company. The signatures of P. C. Minda on this MoU, are admitted. The said MoU laid down the conditions of the emoluments to be paid to Tarun Bindal for his professional services, which were in the nature of lump sum payment on monthly basis and also @ certain percentage as commission based on sales, spread over a period of time for the next eight years. The MoU was duly acted upon and Tarun Bindal was taken as Director of the Company on 01.01.2002. The appointment of Respondent No. 2 Tarun Bindal as Director is an admitted fact and he is also reflected in the FORM-32. The monthly payment of Consultancy Charges are also admitted and corroborated by the Statement of



Accounts of Respondent No. 2, Tarun Bindal. Mr. P. C. Minda had admitted the execution of MoU cum Agreement in his cross-examination, in Complaint case under Section 138 NI Act against him.

26. It is further contended that P. C. Minda and other Directors of the Complainant Company sighted fiscal constraints in immediate payment of commission and asked Respondent No. 2 Tarun Bindal to accept the Post-Dated Cheque for the commissioned amount, which was accepted by him in view of the close family relations. The cheque for Rs.2.5 crore was issued on 25.09.2003 along with the Confirmation Letter on the letterhead of the Complainant Company. The signatures on both, the Cheque and Confirmation Letter, are admitted by P. C. Minda.

27. It is further submitted that alongside the payment of commission, the repayment of loan to the Respondents was also discussed. Again, because of the financial constraints, P. C. Minda had requested Respondents to accept the advance Cheques dated 15.02.2005 in the name of Harish Bindal (Respondent No. 1) as part repayment of loan along with interest, which was accompanied by a similar Confirmation letter on the Letter Head of the Company.

28. Respondents submitted that on presentation of these cheques to the bank for encashment, cheque No.830616 was dishonoured on 31.01.2005 by Canara Bank and cheque No.830615 was dishonoured on 28.03.2005 by Bank of Rajasthan.

29. The Legal Notices under Section 138 NI Act dated 06.02.2005 and 30.03.2005 respectively, were issued to P. C. Minda and thereafter, the Complaints under Section 138 NI Act were filed against the Complainant



Company on 28.02.2005 and 29.04.2005 respectively before Learned MM, Hisar.

30. It is contended on behalf of the Respondents that while in the NCR dated 18.12.2003, it had been stated that the bag and documents had fallen somewhere while P. C. Minda had gone to the shop in the market, but in the Complaint there is a material improvement in claiming that Harish Bindal (Respondent No. 1) was present in the car and he had stolen the bag and documents.

31. To fabricate evidence, P. C. Minda had issued a false Advertisement in two daily Newspaper, i.e. Jansatta and Indian Express, on 26.12.2003. Similar Advertisements in the same Newspapers on the same facts, were given by the son of the Complainant making an identical claim of loss of bag and documents from his car on 18.12.2003. It is stated that similarity of two Advertisements, timing, contents, bill payment and situation clearly indicates that false evidence with regard to the alleged loss of bag and documents has been created for ulterior and dishonest motive without any incident and without loss of alleged bag of the Complainant.

32. Pertinently, for the first time it has been stated in the Complaint dated 21.03.2005 made to Learned MM that the bag also contained the signed blank cheques. However, the number of the cheques was not specified therein or in the NCR dated 18.12.2003. The allegations of theft of the aforesaid two cheques is without any logic, basis and reason.

33. The Chargesheet and the documents filed therein reflect that both the Respondents had received the two cheques along with the Covering Letters. The Cheque Nos. 830614 and 830617 had been issued on 22.09.2003 and 25.09.2003 respectively, one of which is prior and the other



is subsequent to the serial number of the cheques issued to the Respondents were duly encashed, which clearly shows that these impugned Cheques had not been stolen, but in fact had been given to the Respondents as explained by them. The averments made in the Complaint to the learned MM is a counter blast to the Complaints filed under Section 138 NI Act ,out of vendetta, mala fide and ulterior motives.

34. It is also asserted that information to the Bank about the Cheques being missing was conveyed on 25.03.2004, i.e. 96 days after the incident, which is highly abnormal and unbelievable. Furthermore, the falsity of the entire assertions of the Complainant is evident from the statement of P. C. Minda under Section 161 Cr.P.C. dated 28.05.2006, wherein he admitted having received a loan of Rs.64 lacs from the Respondents through Account Payee Cheques, but falsely alleged that the loan amount has been returned in cash. Such alleged return of loan amount in cash, is in contravention of Section 269T of the Income Tax Act, 1961. No documents of repayment of loan in cash have been placed on record.

35. The evidence of hand-Writing Expert Mr. Anurag Sharma, who gave his expert opinion, is not a direct evidence against the Respondents and is not supported by the enlarged photographs of the compared writings. Mr. Anurag Sharma, in his statement on oath in the Complaints under Section 138 NI Act, had stated that he was unable to demonstrate the similarity of the compared signatures before the Court. His Report is incomplete and even if it remains un-rebutted, it is insufficient to bring home the offence of theft and forgery.

36. Moreover, Section 20 NI Act supports the case of the Respondents. In judgment dated 13.03.2008 passed by this Court in CRL.M.C. 5211/2006



titled as *Ravi Chopra vs. State*, it was observed that it is possible for the drawer of a cheque to give a blank cheque signed under the signatures to the payee and the consent either expressed or implied to the cheque being filled up at a subsequent point of time and presented for payment by drawee, is implied. Where the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written is different from the ink of the signatures, is not a material alteration for the purpose of Section 87 NI Act.

37. It is therefore, asserted that from the admitted facts, the fact that the alleged documents having gone missing or the cheques along with the Covering letter not having been issued by the Complainant, is on the face of it patently incorrect. The learned ASJ has rightly appreciated the facts and the documents to conclude that there is no offence made out against the Respondents.

38. There is no merit in the present Petition, which is liable to be dismissed.

39. **Submissions heard, record and written submissions filed on behalf of the Respondents are perused.**

40. The main allegation made by the Complainant was that his blank signed Cheques, etc. which he had thought had gone missing, were in fact stolen and manipulated by the Respondents, who are none other than his son-in-law and grandson. The Charge Sheet had been filed against the respondents under Sections 379/420/467/468/471/506/34 IPC. While Ld. MM directed framing of charges against them under Sections 467/34 IP'C and 471/34 IPC, they have been discharged by the Ld. ASJ.

Contradictory and Delayed Claim of Theft of Cheques and Documents:



41. The case of the Complainant Company is that while P. C. Minda, its Director along with Respondent No. 1 Harish Bindal, who is his son-in-law, had gone to Shalimar Bagh market to purchase medicines on 18.12.2003. On returning from the shop, he realised that his Bag containing signed blank Letterheads of the Company and cheques along with blank Stamp papers and other documents, were missing. Thinking that the same had been dropped / lost somewhere, he got an NCR dated 18.12.2003 registered at PS: Shalimar Bagh.

42. He also took out an Advertisement in two daily newspapers, namely Jansatta and Indian Express on 26.12.2003, in regard to his missing documents.

43. The *Respondents have asserted* that interestingly, similar Advertisements had been made in the name of the son of P. C. Minda as well for the same date and the same documents. Two persons, i.e. father and son, could not have lost the same documents on the same day in the same manner. The way Public Notices have been published, clearly indicate the falsity of the claim of the complainant.

44. However, this contention has no merit for the reason that the advertisements taken out by P. C. Minda and his son pertained to the same incident of loss of documents of the Company which were being carried by P. C. Minda. To claim that there are two different assertions being made by two different people about the same incident, is clearly not tenable.

45. *Respondents have further asserted that in December, 2003, the Complainant had alleged that the documents **had been misplaced**, but subsequently in his Complaint filed on 21.03.2005, the entire version*



changes, wherein allegations of theft had been made against the Respondents who are none other than his son-in-law and grandson.

46. Pertinently, the backdrop, in which the Complaint has been made, needs to be considered. The Complainant at the time when he found his documents missing on 18.12.2003, naturally presumed them to have been misplaced in regard to which he took due precaution by getting a NCR recorded and by taking out an Advertisement in two daily Newspapers, in 2003 itself.

47. It is undisputed that the Respondents gave Legal Notices on 06.02.2005 and 30.03.2005 under Section 138 NI Act, claiming that two cheques of Rs.1 crore and Rs.2.5 crore issued in the name of Respondent No. 1 Harish Bindal and Respondent No. 2 Tarun Bindal, respectively have been dishonoured on presentation.

48. The Complainant has explained that it is only on receiving the Legal Notices dated 06.02.2005 and 30.03.2005 in regard to these presumably lost cheques, that he became aware that these documents had not been misplaced as he had presumed, but had in fact, been taken by Respondent No. 1 Harish Bindal.

49. To say that his allegations are malafide or an afterthought, may not be correct in the light of the facts as stated in the Complaint. It cannot be overlooked that the NCR and Advertisement to Report the Loss of documents was done in December, 2003 and complaint was filed on 21.03.2005. While the Cheques have emerged after almost more than one year in February, March, 2005. It cannot be over looked that the conduct of the Complainant was natural in the circumstances to report the missing documents. It would be absurd to even consider that he would have schemed



and planned his defence in regard to these cheques, more than one year in advance. If so was the intent, nothing prevented the Complainant to lodge the report of theft rather than of misplacing the documents. The Relationship between the parties cannot be over looked for the Complainant to have thought it to be a case of theft at that time.

50. It also cannot be overlooked that the Complainant on becoming conscious of his cheques being missing, gave due intimation to the bank to stop the payments. Such information may have been conveyed after a period of 96 days, but in these circumstances when the Complainant was under the impression that the cheques have been misplaced, time taken to get the payments against the Cheques stopped, cannot be considered as a circumstances creating a doubt about the entire story at the time of framing of Charge or entitling the Respondents to Discharge.

51. Respondents had heavily relied on the letter of Canara Bank dated 08.02.2008, wherein it was indicated that Cheque Nos. 830614 and 830617 of the same series, which was issued prior and after the impugned two Cheques bearing Nos. 830615 and 830616, were duly encashed in the year 2003, shows that the allegations are manipulated.

52. However, it has been explained by the Complainant that since he used to travel frequently and in order to ensure that business of the Company is not hampered in his absence, he used to leave some loose blank cheques and letter heads of the Company under his signatures to facilitate the business. It is therefore, his explanation as to why these two impugned cheques were blank signed cheques. Therefore, the circumstance that cheques prior and subsequent to the impugned two cheques got honoured in 2003, itself cannot be a circumstance which makes the entire Complaint false or warrants the



rejection of the case of the Complainant. Rather, it corroborates the case of the Complainant about these Cheques having gone missing.

53. Rather, this contention of the Respondents that the prior and subsequent cheques got issued on 22.09.2003 and on 27.09.2003, i.e. about three months prior to the alleged theft, prima facie shows that these cheques had been issued in due course by the Complainant and the same is duly corroborated by the impugned Covering Letters dated 25.09.2003 issued along with cheque Nos. 830615 and 830616, *is not acceptable*.

54. The Respondents had taken a plea that the present Complaint and consequent registration of the FIR was only a defence sought to be created by the Complainant to the Complaints under Section 138 NI Act, which got filed by the Respondents.

55. However, from the circumstances as stated above, the Complainant got to know about the alleged misuse and theft of cheques only on receiving the Legal Notices dated February- March, 2005 under Section 138 NI Act, which the Complainant had presumed to be misplaced, were in fact stolen by Respondent No. 1 Harish Bindal. Whether those were misplaced or stolen, is a disputed fact and it cannot be considered at the stage of considering the prima facie case for the purpose of framing of Charge.

MoU dated 01.04.2001:

56. The other document on which Respondents have relied upon is *MoU executed on 01.04.2001*, wherein it was recorded that Respondent No. 2 Tarun Bindal had been appointed as a Director in the Complainant Company w.e.f. 01.01.2002 and the FORM-32 was duly submitted to the ROC. It was agreed that he would keep monthly emoluments @ Rs.25,000/-, which is corroborated by the bank statements. It also contained a clause that



Respondent No. 2 shall be entitled to the commission @ 50% on the profits to be earned from the business. It is claimed by the Respondents that the cheques of Rs.2.5 crore was given to Respondent No. 2 as his Commission, as per the covenant contained in this MoU dated 01.04.2001. The said MoU has been on the Stamp Paper of Rs.5/-, which was purchased on 20.12.2000. The recitations of MoU which are fully corroborated by the independent documents, establishes the authenticity of the MoU and also that Cheques were issued by the Complainant in due course and were not stolen.

57. According to the Complainant, it was one of the blank stamp papers, which the Complainant had misplaced in the year December, 2003, which have been misused by the Respondents to create this MoU. He has denied the authenticity of the said MoU.

58. The statement of the two attesting witnesses, i.e. Mr. S. K. Mangla and Mr. Ajay Kumar Bindal, were recorded under Section 161 Cr.P.C by the Investigating Officer, who stated that they had signed the MoU at the instance of Respondent No. 1 Harish Bindal, but had not seen the Complainant signing it. This *prima facie* raises the question about the authenticity of the MoU, which cannot be considered in favour of the Respondents, at this stage of framing of Charge.

59. The Respondents have also relied on the statement made by the P. C. Minda in his cross-examination during the trial of Complaint Case under Section 138 NI Act, wherein it was admitted that MoU had been executed by him. This admission of the Complainant cannot be considered at the stage of considering the *prima facie* case at the stage of Charge as such alleged admissions need to be proved by confronting the Complainant with the



same. It may be a significant aspect but cannot be considered at the stage of framing of Charge. The Complainant has denied the authenticity of MoU, which needs to be adjudicated only during the trial.

Documents of the Respondents:

60. Respondents had filed their Balance Sheets and Bank Statements before the learned ASJ. First and foremost, these documents have been produced by the Respondents at the stage of framing of Charge, which cannot be considered at this stage but are required to be proved by the Respondents at the appropriate stage of evidence, as has been held in the case of ***State of Orissa v, Debendra Nath Padhi AIR 2005 SC 359.***

61. Further, without prejudice, the Balance Sheets of 31.03.2001 and 31.03.2005 reflect that Rs.21,50,000/- had been duly received by the Complainant Company. In this context, the MoU may also be referred to, wherein, there is an acknowledgment that a sum of Rs.21,50,000/- advanced by the Respondents to P. C. Minda and his son Deepak Minda, Directors, shall be taken as investment in the business, in which Respondent No. 2 Tarun Bindal had agreed to contribute his expertise. This amount as indicated in MoU, fully correspond with the Bank Statements.

62. It was explained by the Complainant that only Rs.41,50,000/- had been taken as an interest free loan by the Complainant and his son from the Respondents at the family level, which had already been returned to them. It was further asserted by the Complainant that Rs.22,00,000/- had been returned by cheque and Rs.19,00,000/- in cash. According to the Complainant, they refuted there being any loan that was due to the Respondents and therefore, have claimed these Covering Letters and the cheques being manipulated and fabricated.



63. The Balance Sheets as well as MoU on which such heavy reliance has been placed by the Respondents, further create a doubt about the authenticity of there being any outstanding loan in respect of which the impugned cheque of Rs.1 crore was issued to Respondent No. 1 Harish Bindal. It cannot be overlooked that according to the Respondents, the loan had been extended by them to the Complainant and his son and if so was the case, where was the question of giving the alleged return of the loan amount in the individual name of Respondents.

64. In any case, these are all defences which need to be proved and considered at the appropriate stage.

Covering Letters dated 25.09.2003:

65. The next set of documents on which the Respondents have relied upon to plead their innocence, are two Covering Letters dated 25.09.2003 along with which the impugned two cheques have been allegedly received by the Respondents.

66. The Complainant has taken a plea that these were the blank Letter heads of the Company which had only his signatures, which had been stolen by Respondent No. 1 Harish Bindal and have been misappropriated and forged by both the Respondents.

67. To corroborate that these cheques have been manipulated, reference has been made to the contents of Letters dated 25.09.2003 addressed to Respondent No. 2 Tarun Bindal, wherein it is indicated that the cheque of Rs.2.5 crore has been given in 2003 for the projected profits for the next five years and the estimated commission to which Respondent No. 2 Tarun Bindal would become entitled.



68. Though, it may not be appropriate to comment on this aspect, but it cannot be overlooked that no business person would give a commission in 2003 for the business and the profits that may accrue in the future. The contents of the Letter need to be proved through evidence especially in the light of denial of its contents by the Complainant.

69. The reference may also be made to the Covering Letter dated 25.09.2003 addressed to Respondent No. 1 Harish Bindal, wherein a reference is made that an advance had been given by both the Respondents to Complainant P. C. Minda and his son Deepak Minda in a total sum of Rs.1,07,29,267/-, towards which post dated cheque No. 830615 dated 15.02.2005 for an amount of Rs.1 crore, was issued.

70. Pertinently, the Letter indicates that the Principal sum of Rs.2,00,000/- was given between 03.07.1996 to 01.02.2005 and Rs.41,50,000/- were given between 01.04.2001 and 01.02.2005. According to this Letter dated 25.09.2003, the loans were given upto 2005. If so was the case, where was the need of giving a post-dated cheque in 2003. Moreover, the total amount along with interest was indicated as Rs.1,07,29,267/-, while the cheque was of Rs.1 crore.

71. There are material contradictory facts which have been mentioned in this Letter, on which the Respondents have relied heavily to justify the two impugned cheques, which can only be adjudicated through trial.

72. The documents *per se*, authenticity of which has been denied by the Complainant, cannot be adjudicated at the stage of asserting if there is a prima facie case made out against the Respondents.

73. The Apex Court in the case of Sajjan Kumar (Supra) has observed that the presumption of the guilt of the accused which is to be drawn at the



initial stage, is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence as stated in the Chargesheet along with the documents be considered as gospel truth, still then the discharge is not justified.

74. The Complainant has claimed the Letters were manipulated on the blank signed Letter Heads of the Company by the Respondents. The question of authenticity of these Letters, which is claimed by the Complainant to be fabricated, needs to be established only by way of evidence.

FSL Report:

75. The FSL establishes that the documents had the signatures of P. C. Minda, but that itself is not sufficient as the Complainant himself has admitted his signatures on these documents. However, the assertion is that the contents of the documents have been fabricated, which can be ascertained only by evidence.

Conclusion:

76. In the present case, the various documents relied upon by the Respondents to claim their innocence, are all disputed documents and their authenticity can only be established by way of evidence and cannot be adjudicated at this stage of framing of Charge.

77. The statement of the Complainant that it was blank Cheques and the Letterhead which had his signatures and which have been subsequently manipulated by the Respondents coupled with the attending circumstances, ***do give rise to a prima facie case of theft against Respondent No. 1 Harish Bindal and under Sections 467/471/34 IPC against both the Respondents.***



78. The learned District and Sessions Judge fell in error in getting into the presumptions under Sections 139 and 118 of NI Act to practically adjudicate the cases under Section 138 NI Act, which was beyond the scope of consideration whether Chargesheet and the documents disclosed are *prima facie* case against the Respondents.

79. The impugned Order dated 02.08.2011 passed by learned District and Sessions Judge, Rohini Courts, Delhi, is hereby set aside and the Order of the learned MM framing the charges against both the Respondents, is upheld.

80. Learned MM is directed to continue with the trial by recording the evidence of the prosecution. It is hereby, clarified that observations made herein, are not an expression on the merits of the case.

81. Petitions and pending Applications, if any, are accordingly disposed of. Parties are directed to appear before the learned MM on 07.07.2025.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 28, 2025/R