



2025:DHC:8171



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 16.09.2025*+ **CRL.M.C. 1602/2022 & CRL.M.A. 6869/2022**

NOUAM FINANCIAL CONSULTANTS PVT. LTD.

&amp; ANR

.....Petitioner

Through: Mr. Vikas Gupta, Mr. Ishaan Gupta, Mr. Ayush Bhargav, Mr. Sohil Sharma and Ms. Aditi Saxena, Advocates

versus

THE STATE (GOVT. OF NCT DELHI)

&amp; ANR.

.....Respondents

Through: Mr. Manoj Pant, APP for the State with Mr. Chandrakant, Advocates  
Mr. Shailendra Bhatnagar, Ms. Swati Jain, Ms. Shivani Pal, Mr. Shreeyanshu Bhatnagar, Mr. Rudra Pratap Singh and Mr. Animesh, Advs. for R-2.

**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973 [hereafter 'Cr.P.C.'] read with Article 227 of the Constitution of India, the petitioners seek quashing of



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summoning orders dated 21.05.2018 and 21.07.2018 passed by learned MM-6, Rohini Courts, North District, Delhi [hereafter '*Trial Court*'], in Criminal Complaint No. 3490/2017, filed under Section 138 of the Negotiable Instruments Act, 1881 [hereafter '*NI Act*'] titled '*Progressive Finlease Ltd. vs. Karan Judge & Ors.*' and consequent proceedings initiated thereupon.

2. Brief facts of the case, as borne out from the complaint filed under Section 138 of the NI Act, are that the respondent no. 2, i.e., Progressive Finlease Limited (the complainant) is a company engaged in providing loan services to its customers, whereas, petitioner no. 2 is the director of petitioner no. 1 which is in the business of lending loan money to its prospective borrowers. It is alleged that the petitioners and the respondent no. 2 had entered into a transfer agreement dated 07.12.2015 to avail a loan amount in the ratio of 45% against the market value of the shares which were transferred into the Demat Account of petitioner no. 2. The ratio of loan amount against the market value of the shares was later changed to 33% which was executed by way of an Addendum dated 26.02.2016 to the transfer agreement dated 07.12.2015 in which the loan amount was fixed at ₹1,07,51,400/- i.e., 33% of the value (at that time) of the shares on 24.02.2016. Further, on 06.12.2016, the loan agreement had been extended till 31.03.2017. It is mentioned that as per Clause 3.2.5 of the transfer agreement dated 07.12.2015, the petitioners were bound not to sell the shares given by the respondent no. 2; however, the respondent no. 2 had become



apprehensive of the security of its shares and therefore expressed its willingness to repay the entire loan along with interest, in return for the re-transfer of the shares. In this regard, allegedly, certain requests for statements of shares, settlement of accounts, as well as for buy-back shares by the respondent had also been made; however, to no avail. However, admittedly, petitioner no. 1 had issued a cheque of ₹5,76,40,000/- dated 31.03.2017, bearing no. 180463, in favour of respondent no. 2, allegedly, as security for the concerned shares. Thereafter, it is stated that when respondent no. 2 deposited the said cheque for encashment, the same was dishonoured with the remarks “Payment Stopped by Drawer” *vide* return memo dated 05.06.2017. Thereafter, statutory notice dated 16.06.2017 was served upon the petitioners on 22.06.2017 calling for the repayment of cheque amount. However, the petitioner did not comply with the same, in which light, the respondent no. 2 was constrained to file a complaint on 21.07.2017 before the learned Trial Court, which was shortly followed by the issuance of summons *vide* orders dated 21.05.2018 and 21.07.2018.

3. Aggrieved therefrom, the petitioners have preferred the present petition before this Court.

4. The learned counsel appearing for the petitioners argues that the impugned summoning orders are legally unsustainable, as the same have been issued in ignorance of the fact that the cheque in question was not issued in lieu of a ‘legally enforceable debt or



liability’, which is a mandatory pre-requisite for a case under Section 138 of NI Act to be made out; instead, as argued, the concerned cheque had been drawn as a mere ‘security’ cheque. It is specifically contended that in the guise of the impugned proceedings, the respondent no. 2 is attempting to evade its liability to repay the loan, along with interest, to the petitioner. Specifically, it is contended that *vide* Clause 3.2.5 of the transfer agreement, shares of the respondent no. 2 were to be re-transferred only upon repayment of the loan with interest to the petitioners; thus, upon its non-payment, even the cheque, and subsequent proceedings thereupon, lose any legal basis.

5. *Conversely*, the learned counsel appearing for respondent no. 2 submits that the petitioner no. 1 (accused company) had lent a loan of about ₹1,07,51,400/- to the respondent no. 2, which equated to 33% of the market value of its shares. It is argued that the transfer agreement dated 07.12.2015, *vide* which the said transaction is governed, expressly prohibited the petitioner from selling the said shares; however, the petitioners indulged in misappropriation thereof. Specifically, it is contended that the respondent no. 2 had, on multiple occasions, requested the petitioner for submitting statements of accounts etc. and for buy-back of shares, with the willingness to repay the entire loan with the requisite interest. It is contended that it had also sought an updated status vis-à-vis its shares; however, the petitioner did not adhere to the same, instead, they kept prolonging the closure of the transactions. In this backdrop, it is argued that the cheque in question, issued by the petitioner, could not be termed as



being a 'security'. Moreover, it is argued that requisite steps upon the notice of the dishonour of the said cheque had been taken, thereby clearly making out a case under Section 138 of the NI Act. Lastly, it is contended that the present petition ought to fail on account of being filed after a lapse of four years. Thus, it is argued that the impugned summoning orders are legally sustainable and the present petition deserves to be dismissed.

6. This Court has **heard** the arguments addressed on behalf of the petitioners and the respondents, and has perused the material on record.

7. Before appreciating the rival contentions, it shall be apposite to succinctly refer to the law on Section 138 of NI Act. The essentials to constitute an offence under Section 138 of NI Act were discussed by the Hon'ble Supreme Court in *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel*: (2023) 1 SCC 578, which are reproduced as under for reference:

“11. Section 138 of the Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

- (i) A cheque drawn for the payment of any amount of money to another person;
- (ii) The cheque is drawn for the discharge of the whole or part of any debt or other liability. Debt or other liability means legally enforceable debt or other liability; and
- (iii) The cheque is returned by the bank unpaid because of insufficient funds.

However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the



proviso are as follows:

- (i) The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;
- (ii) The holder of the cheque must make a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within thirty days from the receipt of the notice from the bank that the cheque was returned dishonoured; and
- (iii) The holder of the cheque fails to make the payment of the said amount of money within fifteen days from the receipt of the notice..."

8. There is no dispute that to constitute an offence under Section 138 of NI Act, the cheque in question should have been issued in discharge of some legally enforceable debt or liability. However, it is also well-settled that once certain facts have been shown to exist, the presumptive clauses under the scheme of the NI Act, such as Section 139, get attracted, whereby it has to be mandatorily presumed that the cheque in question had been issued in relation to a legally enforceable debt. In this regard, the Hon'ble Supreme Court in case of ***Oriental Bank of Commerce v. Prabodh Kumar Tewari***: 2022 SCC OnLine SC 1089 has held that a drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability.

9. In the given backdrop, at the outset, this Court finds, upon a perusal of the record, that it is admitted that the cheque in question, i.e. cheque dated 31.03.2017 had been issued by the petitioner no. 1



in favour of the respondent no. 2 (complainant) in lieu of the shares of respondent no. 2, kept as security for the loan taken by it from petitioner no. 1. Further, the cheque was admittedly returned unpaid to the respondent no. 2 when the same had been presented for encashment. The return memo dated 05.06.2017, placed on record, corroborates the same. Furthermore, it is also evident that a statutory notice dated 16.06.2017 had also been served upon petitioners calling upon them to make the requisite payment, and thereafter the complaint under Section 138 of the NI Act was filed. A perusal of the Trial Court Record also reveals that at the time of framing of notice, the petitioner no. 2 herein did not dispute the issuance of cheque in question, and rather stated that a duly-filled cheque had been issued to the respondent no. 2, but disputes the purpose of issuance of the said cheque. However, since the issuance of cheque, including the filling of details and the signatures put on the same, were admitted by the petitioners, the presumption under Section 139 of the NI Act squarely gets attracted against petitioners, that is, it has to be presumed that the cheque pertains to a legally enforceable debt or liability.

10. Notably, while the said presumption can be rebutted by the petitioners, the same has to take place at the stage of trial before the learned Trial Court, and not at a pre-trial stage, so as to stall the very initiation of proceedings before it. In the instant case, the petitioners primarily dispute the purpose for drawing the concerned cheque, contending that it was issued as a 'security' for the respondent 2, in



lieu of securing its shares; however, the same remains a matter of trial [Ref: *M.M.T.C Ltd. & Anr v. Medchl Chemicals & Pharma (P) Ltd. & Anr*: (2002) 1 SCC 234]. In this regard, the petitioner no. 1's contention that even the shares, in securing which the said cheque had been issued to the respondent 2, had not been deposited in its personal demat account but in that of the petitioner 2's account, is without merit, because petitioner no. 2 was acting on behalf of the petitioner no. 1-company, being its Director and entering into all the agreements in dispute with the respondent no. 2, lest there was no occasion to even issue the said cheque in favour of respondent 2, as admitted, if the petitioner-company were really doubting the receipt of shares from respondent.

11. Pertinently, it has also been held by the Hon'ble Supreme Court in *Rajeshbhai Muljibhai Patel v. State of Gujarat*: (2020) 3 SCC 794 that once legal presumption under Section 139 of NI Act, in a given case, is attracted, it would not be judicious for the High Court in carrying out a detailed enquiry on the facts alleged and then quashing the case, especially when the Trial Court is simultaneously seized with the matter. It was observed as under:

“22. ....The nature of presumptions under Section 139 of the N.I. Act and Section 118(a) of the Indian Evidence Act are rebuttable. Yogeshbhai has of course, raised the defence that there is no illegally enforceable debt and he issued the cheques to help appellant No.3-Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the presumption under Section 139 of N.I. Act will continue to remain. It is for





Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C.”

12. Similarly, the Hon’ble Supreme Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)***: 2022 SCC OnLine SC 513, has observed that the burden of proving that there is no existing legally enforceable debt or liability, is to be discharged during the course of trial, and the same cannot be a ground for quashing of a complaint or summoning order under Section 138 of NI Act.

13. Further, it is evident from the records that the trial in the matter is nearing its end, and the matter is at the stage of defense evidence as no stay on proceedings was granted by this Court. Moreover, it is also apparent that the present petition was filed, assailing the summoning order, after a delay of about 4 years.

14. Thus, in view of the foregoing discussion, and considering the fact that presumption under Section 139 of NI Act is *prima facie* attracted against the petitioners and the only argument of the petitioner pertains to the cheque being not issued a legally enforceable debt or liability – which is a matter of trial, this Court finds no ground to exercise its power under Section 482 of the Cr.P.C., which has to be sparingly exercised and cannot be invoked casually, to quash the impugned summoning orders and the proceedings arising therefrom.



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15. Accordingly, the present petition is dismissed along with pending application, if any.

16. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

17. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J.**

**SEPTEMBER 16, 2025/ns**

*T.D./V.S.*