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

\+ **CRL.M.C. 4551/2022 & CRL.M.A. 18487/2022**

RISHI MUNI DUBEY .....Petitioner

Through: Mr. Rajat Bhardwaj, Ms. Ankita M. Bhardwaj, Mr. Saurav Kakroda and Mr. Kaustubh Khanna, Advocates.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Manoj Pant, APP for the State.
Mr. Adit Pujari and Ms. Aanchal Basur, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **20.12.2024**

1. The present petition is filed, *inter alia*, praying as under :

> *a) To set aside the summoning order dated 30.09.2019 passed by the Ld MM in Complainant Case No. 1423/2019,*
> *b) Dismiss the complaint Case No. 1423/2019 pending against the Petitioner before the Ld Metropolitan Magistrate-04, Rouse Avenue District Courts, New Delhi,*
> *c) To call for the record and proceedings in CC No. 1423/19 pending before Metropolitan Magistrate-04, Rouse Avenue District Courts, New Delhi,*
> *d) Any other order or directions as may be deemed proper in the facts of this case may kindly be passed in the interest of justice.*

2. The petitioner, Rishi Muni Dubey, is the father of Mayank Dubey and Mayur Dubey. The genesis of the case lies in a business dispute between the petitioner’s sons and the

complainant/ Respondent No. 2 regarding trading activities in the stock market.

3. Due to alleged financial irregularities, an FIR No. 16/2015 was registered against the petitioner's sons under Sections 409/420/467/ 468/471/120B/34 of the Indian Penal Code, 1860 ('**IPC**'). To resolve the matter, an MoU dated 03.08.2018 was executed between the petitioner's sons and the complainant. As per the terms of the MoU and towards discharge of legally enforceable debt, Accused Nos.1 and 2 (sons of the petitioner) handed over the subject cheque bearing no. 000587 for a sum of ₹8,00,000/- issued from the account of the petitioner to the complainant.

4. Subsequently, the petitioner's sons were admitted on interim bail for a period of six months by order dated 03.08.2018.

5. The complaint in the present case was filed following the dishonour of the subject cheque, which was presented by the complainant for encashment. The cheque was returned unpaid with a remark indicating *"Account Closed"*. A statutory legal notice was thereafter served on the petitioner, but the payment was not made within the stipulated time, leading to the filing of the complaint under Section 138 of the NI Act. The complainant has alleged that the cheque was issued in furtherance of a legally enforceable debt under the MoU and its dishonor constitutes an offense under the Negotiable Instruments Act, 1881 ('**NI Act**').

6. By the impugned order, cognizance of offence under Section 138 of the NI Act was taken by the learned MM and the petitioner was summoned.

7. The petitioner contends that the cheques were issued solely as security and were to be replaced by demand drafts upon

final settlement. Despite repeated requests, the complainant allegedly presented the subject cheque.

8. The learned counsel for the petitioner submits that the cheque in question was issued solely as a security instrument and not against any legally enforceable debt. This distinction is critical under Section 138 of the NI Act, which requires the existence of a legally enforceable liability at the time the cheque was presented. He submits that the cheque was provided in accordance with the MoU dated 03.08.2018, under which it was explicitly agreed that the cheques would be replaced with demand drafts if the settlement terms were fulfilled.

9. He submits that the petitioner was not a party to the underlying business transactions between the complainant and his sons. The petitioner acted only as a guarantor and was coerced into issuing post-dated cheques to facilitate the interim bail of his sons. The petitioner argued that this coercion and his non-involvement in the substantive dealings negate any personal liability on his part.

10. The learned counsel also pointed out that the complainant had violated the terms of the MoU by presenting the cheque without fulfilling the agreed conditions. Despite multiple requests made by the petitioner to return or replace the cheques, the complainant acted in bad faith by initiating proceedings under Section 138 NI Act. This act, the petitioner argued, was not only a breach of trust but also an attempt to misuse the criminal justice system to exert undue pressure.

11. He further submits that the summoning order issued by the learned MM failed to consider the factual matrix of the case, including the conditional nature of the cheque. Relying on the

settled principles of law, it is contended that a security cheque, by its very nature, does not constitute a legally enforceable debt or liability.

12. The learned counsel for Respondent No. 2 submitted that the cheque in question was issued as part of a valid and binding settlement agreement. The MoU dated 03.08.2018 expressly required the issuance of post-dated cheques by the petitioner to secure payment obligations arising out of the settlement. He submits that the petitioner, as the guarantor, voluntarily undertook the responsibility to ensure compliance with the settlement terms by issuing these cheques.

13. He submits that the petitioner's claim that the cheque was issued as a security instrument is an afterthought and lacks any supporting evidence. He submits that the presumption under Section 139 of the NI Act operates in favour of the holder of the cheque and that this presumption cannot be rebutted without leading evidence during the trial.

14. He submits that the petitioner's assertions regarding alleged breaches of the MoU by the complainant are factual disputes that fall outside the purview of proceedings under Section 482 of the CrPC. These issues require adjudication through proper trial proceedings, where evidence can be led and cross-examined.

15. Lastly, he submits that the impugned order passed by the learned MM is based on a *prima facie* satisfaction of the ingredients of Section 138 of the NI Act. The petitioner's attempt to seek quashing of the complaint at this stage amounts to circumventing the trial process and should not be entertained.

16. At the outset, it is relevant to note that this Court can quash the summoning orders issued in NI Act cases in the exercise of its inherent jurisdiction under Section 482 of the CrPC if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques or that no offence is made out from the admitted facts. The Hon'ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** **: 2022 SCC OnLine SC 513** had discussed the scope of interference by the High Court against the issuance of process under the NI Act as under:

> *"8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.*
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> *xxx xxx xxx*
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> *16.* ***The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.***
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> ***17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process.*** *Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.*
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> *18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to*

be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

(emphasis supplied)

17. In line with the dictum of the Hon'ble Apex Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** *(supra)*, thus, while exercising the power under Section 482 of the CrPC to quash a summoning order, it is pertinent for this Court to examine whether the factual defence is of such unimpeachable nature that the entire allegations made in the complaint is disproved.

18. In the instant case, Respondent No.2 had filed a complaint under Section 138 of the NI Act. The learned MM relying upon the complaint supported by the affidavit of the complainant, took cognizance under Section 138 of the NI Act, and passed the impugned order.

19. The core argument, upon which, the learned counsel for the petitioner argued is that the cheque was issued in the nature of security and since there was no legally enforceable debt or other liability at the time of drawal of the cheque, the provisions of Section 138 of the NI Act would not attract.

20. The petitioner has placed reliance on emails allegedly sent prior to the presentation of the cheque, wherein the complainant was requested not to present the cheque and replace it with demand drafts. While these emails provide context to the petitioner's defence, their implication on the enforceability of the debt is a factual matter requiring evidence and cross-examination. Such documents, being in the nature of defence, do

not possess the unimpeachable quality required to invoke the jurisdiction under Section 482 CrPC. The emails and other material and the context in which they had been sent are not admitted by the respondent. The same would have to be tested after the evidence is led, and is a disputed question at this stage.

21. It is also pertinent to note that the MoU explicitly required the issuance of cheques as part of the settlement agreement. The petitioner's contention that the complainant acted in violation of the MoU by presenting the cheque without fulfilling the agreed conditions is a matter that requires detailed factual examination. Such issues fall squarely within the domain of the trial court.

22. The petitioner's contention that the cheque was issued as a security instrument is a defence that invokes factual adjudication. Under Section 139 of the NI Act, there exists a statutory presumption in favour of the holder of the cheque, which can only be rebutted by evidence led during trial. The petitioner's claim that the MoU was not fulfilled and that cheques were encashed merely to extend bail are issues that cannot be conclusively resolved at this stage.

23. The reliance placed on the alleged "security" nature of the cheque does not alter the legal presumption of liability. The petitioner's argument that the cheques were conditional requires thorough examination, which is within the domain of the trial court. At this stage, such arguments do not meet the standard of unimpeachable material necessary to invoke Section 482 of the CrPC.

24. The petitioner's argument that the summoning order fails to consider the conditional nature of the cheque is misplaced. At the stage of summoning, the Magistrate is only required to

ascertain whether a prima facie case exists. Detailed scrutiny of defences is beyond the scope of inquiry at this stage.

25. This Court, in the case ***Suresh Chandra Goyal v. Amit Singhal* : 2015 SCC OnLine Del 9459** had an occasion to deal in detail with the circumstances where the debt in question can be interpreted to be owed by the accused to the complainant for the purpose of Section 138 of the NI Act. The Court interpreted the term legally enforceable debt when the cheques are issued as a security. It was held that the expression security cheque is not a statutorily defined expression in the Act. There can be a situation where the cheques are given to provide an assurance or comfort to the drawee that in case of failure to pay the primary consideration on the due date, the security may be enforced. It was held as under :

> *"50. In Indus Airways Pvt. Ltd. v. Magnum Aviation Pvt. Ltd., IV (2014) SLT 321, the question that arose for consideration before the Supreme Court was, whether the post dated cheques issued by the appellants (purchasers) as an advance payment in respect of purchase orders could be considered in discharge of a legally enforceable debt or other liability and, if so, whether the dishonour of such cheques amount to an offence under Section 138 of NI Act. The appellants before the Supreme Court were the purchasers who had placed purchase orders and issued post dated cheques in favour of the respondent towards advance payment. One of the terms and conditions of the contract was that the entire payment would be made to the supplier in advance. The supplier claimed that the advance payment had to be made, as it had to procure the parts from abroad. The cheques were dishonoured upon presentation on the ground that the purchasers had stopped payment. Thereafter, the purchasers cancelled the purchase orders and requested for return of the cheques. The respondent/seller insisted on collecting payment and initiated a complaint under Section 138 of NI Act after sending a demand notice.*
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> *51. This Court, following its decision in Moji Engineering Systems Ltd. v. A.B. Sugars Ltd., 154 (2008) DLT 579, held that the issuance of a cheque at the time of signing such a*

contract has to be considered against a liability, as the amount written in the cheque is payable by the person on the date mentioned in the cheque.

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61. Thus, in my view, it makes no difference whether, or not, there is an express understanding between the parties that the security may be enforced in the event of failure of the debtor to pay the debt or discharge other liability on the due date. Even if there is no such express agreement, the mere fact that the debtor has given a security in the form of a post dated cheque or a current cheque with the agreement that it is a security for fulfillment of an obligation to be discharged on a future date itself, is sufficient to read into the arrangement, an agreement that in case of failure of the debtor to make payment on the due date, the security cheque may be presented for payment, i.e. for recovery of the due debt. If that were not so, there would be no purpose of obtaining a security cheque from the debtor. A security cheque is issued by the debtor so that the same may be presented for payment. Otherwise, it would not be a security cheque. As observed above, the MOU (Ex.CW-1/4) does not expressly, or even impliedly states that the security cheques are not to be used to recover the installments, even in case of failure to pay the same by the respondent/debtor.

*62. Section 138 of NI Act does not distinguish between a cheque issued by the debtor in discharge of an existing debt or other liability, or a cheque issued as a security cheque on the premise that on the due future date the debt which shall have crystallized by then, shall be paid. So long as there is a debt existing, in respect whereof the cheque in question is issued, in my view, the same would attract Section 138 of NI Act in case of its dishonour.***"**

26. As discussed above, the allegations made in the complaint, at the stage when the complaint is sought to be quashed at the initial stage, are to be taken on a demurrer unless evidence of unimpeachable character has been produced.

27. The legal presumption of the cheques having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves the Court for quashing even before the trial has commenced, the Court's approach should be careful not to prematurely extinguish the case by disregarding the

legal presumption supporting the complaint. The Supreme Court, in the case of ***Bir Singh v. Mukesh Kumar*** **: (2019) 4 SCC 197**, held as under:

> *"32. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*
> *33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted."*

28. This Court is in agreement with the contention of the learned counsel for Respondent No.2 that at the stage of issuance of summons, the complaint ought to be considered on a demurrer, and the learned Magistrate ought to only be satisfied whether the ingredients of Section 138 of the NI Act are *prima facie* made out.

29. It is pertinent to note while exercising the power under Section 482 of the CrPC to quash a summoning order, it is imperative that the factual defence be of such unimpeachable nature that the entire allegations made in the complaint is disproved. From a consideration of the totality of circumstances, it is apparent that no such unimpeachable evidence has been produced by the petitioners that would warrant this Court to exercise jurisdiction under Section 482 of the CrPC.

30. All the defences raised by the parties would be considered in the trial after the evidence is led.

31. In view of the aforesaid, this Court does not find any reason to interfere with the impugned order, and the same cannot be faulted with.

32. The present petition is accordingly dismissed. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 20, 2024
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