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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2631/2023 & CRL.M.A. 9900/2023
V.B. FOODS EXPORT PVT. LTD. AND ORS. Petitioners

Through: Mr. Kushagra Bansal, Advocate.

versus

KAMLESH GOEL Respondent

Through: Dr. Hemant Gupta & Ms. Payal
Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
01.12.2023

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1. The present petition under Section 482 of the CrPC seeks the following prayers:

"1. Allow the present Petition and quash/ set aside the criminal complaint bearing CC no. 20702 of 2018 titled as "Kamlesh Goel vs. V.B. Foods Export Pvt. Ltd.& Ors. " pending before the Ld. Metropolitan Magistrate, Tis Hazari Courts, New Delhi filed by the Respondent; AND

2. Pass any other and further Order in favour of the Petitioners in the Interest of Justice."

2. Learned counsel for the petitioner submits that in the present complaint, four cheques are alleged to have been issued by the petitioner, amounting to a total of Rs. 4,75,000/-. It is the case of the petitioner that a payment of Rs. 2,00,000/- was made to the respondent on 26.11.2018 and the complaint was filed on 13.12.2018. It is also contended that a further



payment of Rs. 2,75,000/- has been made to the respondent after filing on the complaint on 19.12.2018. Learned counsel appearing on behalf of the petitioner placed reliance on **Suman Sethi v. Ajay K. Churiwal, AIR 2000 SC 828, Dashrathbhai Trikambhai Patel v. Hitesh Mahenderabhai Patel and Anr., (2023) 1 SCC 578** and **Shiju K. v. Nalini and Anr., 2015:KER:49319**.

3. Relying on the aforesaid judgments, learned counsel for the petitioner submits that since part payment of the cheque amount had been made, there was no cause of action for the complainant to file a complaint under Section 138 of the Negotiable Instruments Act.

4. *Per contra*, learned counsel for the respondent submits that the legal notice dated 23.10.2018 issued with respect to the cheques was dispatched on 24.10.2018. It is pointed out that the aforesaid payments were not made within the statutory period of 15 days and therefore, a cause of action had arisen. Learned counsel for the respondent relies on **Rajneesh Aggarwal v. Amit J. Bhalla, (2001) 1 SCC 631**.

5. Heard learned counsel for the parties and perused the record.

6. In **Dashrathbhai (supra)**, the Hon'ble Supreme Court, held as under:

"34. In view of the discussion above, we summarise our findings below:

34.1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

34.2. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.

34.3. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed



with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted.

34.4. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the “legally enforceable debt” on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.

34.5. The notice demanding the payment of the “said amount of money” has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

7. Learned counsel for the petitioner has also relied upon Para 9 of judgment in *Suman Sethi (supra)* aforesaid judgment. Similarly, reliance was placed on a judgment passed by the Hon'ble High Court of Kerala in *Shiju K. (supra)*, wherein it has been held that on a part payment being made by the drawer of the cheque, the instrument should be endorsed in terms of Sections 15 and 56 of the Negotiable Instruments Act.

8. A perusal of the aforesaid judgments reflects that the relevant period for part payment of cheque amount would be either before encashment or within 15 days after issuance of legal notice. The contention of the petitioner is that in view of the first payment of Rs. 2,00,000/- , the complaint could not have been filed. However, admittedly, the said payment was made on 26.11.2018, i.e., well beyond the statutory period of 15 days after the notice was sent on 23.10.2018. On account of the same, cause of action had already



arisen for filing the complaint, part complaint could not have been filed. The second installment was paid after the complaint was filed and its bearing on the case of the petitioner can be considered at trial. The judgment relied upon by learned counsel for the respondent in **Rajneesh Aggarwal** (*supra*), records as under:

"7. So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fides, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant's counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the court or that an order of quashing of criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence."

9. In view of the above, the present petition is dismissed and disposed of accordingly.
10. Pending applications, if any, also stand disposed of.
11. Interim order dated 17.04.2023 stands vacated.

AMIT SHARMA, J

DECEMBER 1, 2023/sa