

HIGH COURT OF DELHI**Bench: Justice Rajnish Bhatnagar****Date of Decision: 29 November 2023**

W.P.(CRL) 1366/2023 AND CRL.M.A. 12888/2023

PAYAL MALHOTRA ...PETITIONER**VERSUS****SULEKH CHAND ...RESPONDENT****Legislation and Rules:**

Section 482 of the Criminal Procedure Code (Cr.P.C)

Section 138 of the Negotiable Instruments Act, 1881

Subject:

Petition under Section 482 Cr.P.C seeking quashing of proceedings against the petitioner in a case under Section 138 of the Negotiable Instruments Act involving dishonored cheque.

Headnotes:

Petition for Quashing Proceedings – Section 482 Cr.P.C – Case of dishonored cheque under Section 138 N.I. Act – Petitioner seeking quashing of proceedings for a cheque issued as security, not honored due to alleged misuse by the respondent [Paras 1, 5].

Legal Position on Cheque Dishonor – Cheque issued as security, when dishonored, attracts Section 138 N.I. Act – Emphasis on obligation to honor cheques and legal consequences of dishonor [Paras 6, 13].

Defense of Misuse of Cheque – Petitioner's claim of misuse and improper filling of cheque details by the respondent – Defense includes allegations of cheque being issued for security and misuse in breach of trust [Para 5].

Jurisdiction of High Court under Section 482 Cr.P.C – Limited scope for quashing proceedings – Need for evidence and trial to evaluate claims and defenses in cheque dishonor cases [Paras 10, 15].

Supreme Court Precedents – Reference to judgments elucidating circumstances under which security cheques attract Section 138 N.I. Act and the scope of defenses available in such cases [Paras 11, 14].

Dismissal of Petition – No ground found for quashing proceedings – Trial court to consider defenses in accordance with law [Para 16].

Referred Cases:

- Sripati Singh (since deceased) Through His Son Gaurav Singh vs. State of Jharkhand & Anr.
- Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr.
- NEPC Micon Limited and Others vs. Magma Leasing Limited [(1999) 4 SCC 253].

Representing Advocates:

Mr. Yogendra Kumar Verma for the petitioner.

JUDGMENT

RAJNISH BHATNAGAR, J

1. The present petition under Section 482 Cr.P.C has been filed by the petitioner seeking the following reliefs:-
 - "(a) Issue a writ in the nature of certiorari or any other writ or order or direction thereby directing for quashing the proceeding against the petitioner in case bearing CC NI Act 2459/2023, titled as "Sulekh Chand Vs. Payal Malhotra",*
 - (b) Call the trial court record of the case bearing CC NI Act 2459/2023, titled as "Sulekh Chand Vs. Payal Malhotra",*
 - (c) Pass such other order or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice."*

2. The complainant (respondent herein) had instituted a complaint under Section 138 of Negotiable Instruments Act, 1881 against the present petitioner in respect of non-payment against one dishonoured cheque for the amount of Rs. 5,82,217 /- issued by petitioner in favour of the respondent.
3. The Metropolitan Magistrate vide Order dated 03.03.2023 issued summons under Section 138 of Negotiable Instruments Act, 1881 requiring the petitioner to attend the Court.
4. The petitioner feeling aggrieved, filed the present petition invoking jurisdiction of this Court U/s 482 Cr.P.C.
5. It has been mainly argued by the Ld. Counsel for the petitioner that on 21.11.2014, one Bill bearing no. 433 of Rs. 5,82,217/- was given to the petitioner from the respondent's firm and the impugned blank cheque was issued to the respondent for the purpose of security, not in discharge of any existing legally recoverable debt or liability as alleged by the respondent. He further submitted that the said cheque was misused by the respondent herein and even after newspaper publication dated 23.06.2022 and receiving Legal Notices dated 13.08.2022 and 22.08.2022, the cheque in question was not returned by the respondent to the petitioner. He further submitted that the said amount has been duly paid by the petitioner which is evident from the bank statements as well as the ledger account maintained by the petitioner herein during the course of regular business w.e.f. 01.04.2014 to 31.03.2017. Furthermore, he submitted that the cheque was undated and the particulars/Amount has not filled by the petitioner herein, moreover, in the said cheque, the date and amount has been filled in a different hand writing. He further submitted that forged C-Form has been filed to substantiate the case and the petitioner has also filed criminal complaints against the respondent in Office of SSP, Karnal, Haryana and Sales Tax Offices. He further submitted that the respondent has misused the impugned cheque in breach of mutual trust between the parties and the proceedings under Section 138 N.I. Act initiated by the respondent is counter to the Civil Suit, which has been filed by the petitioner against the respondent for the recovery of amounts. He submitted that the respondent is demanding a total sum of Rs. 5,82,217/- which includes Rs. 2,38,602/- against the alleged supply of materials along with Rs. 3,43,613/- towards the interest amount @ 24% p.a, from the date of

due till actual realization of said sum, which is totally illegal and the calculation is not justified in any manner and thus, it cannot be assumed that there exists a legally enforceable debt or liability.

6. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.PC which have been discussed in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. It is seen in many cases that the petitioners with malafide intention and to prolong the litigation raise false and frivolous pleas and in some cases, the petitioners do have genuine defence, but instead of following due procedure of law, as provided under the N.I. Act and the Cr.PC, and further, by misreading of the provisions, such parties consider that the only option available to them is to approach the High Court and on this, the High Court is made to step into the shoes of the Metropolitan Magistrate and examine their defence first and exonerate them. The High Court cannot usurp the powers of the Metropolitan Magistrate and entertain a plea of accused, as to why he should not be tried under Section 138 of the N.I. Act. This plea, as to why he should not be tried under Section 138 of the N.I. Act is to be raised by the accused before the Court of the Metropolitan Magistrate under Section 251 of the Cr.PC & under Section 263(g) of the Cr.PC.

7. The offence under Section 138 of the N.I. Act is an offence in the personal nature of the complainant and since it is within the special knowledge of the accused as to why he is not to face trial under section 138 N.I. Act, he alone has to take the plea of defence and the burden cannot be shifted to complainant. There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. If an accused has a defence against dishonour of the cheque in question, it is he alone who knows the defence and responsibility of spelling out this defence to the Court and then proving this defence is on the accused. Once the complainant has brought forward his case by giving his affidavit about the issuance of cheque, dishonour of cheque, issuance of demand notice etc., he can be cross-examined only if the accused makes an application to the Court as to, on what

point he wants to cross examine the witness(es) and then only the Court shall recall the witness by recording reasons thereto.

8. Sections 143 and 145 of the N.I. Act were enacted by the Parliament with the aim of expediting trial in such cases. The provisions of summary trial enable the respondent to lead defence evidence by way of affidavits and documents. Thus, an accused who considers that he has a tenable defence and the case against him was not maintainable, he can enter his plea on the very first day of his appearance and file an affidavit in his defence evidence and if he is so advised, he can also file an application for recalling any of the witnesses for cross-examination on the defence taken by him.
9. In view of the procedure prescribed under the Cr.PC, if the accused appears after service of summons, the learned Metropolitan Magistrate shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.PC and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of N.I. Act for recalling a witness for cross-examination on plea of defence. If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant. Once the summoning orders in all these cases have been issued, it is now the obligation of the accused to take notice under Section 251 of Cr. PC., if not already taken, and enter his/her plea of defence before the concerned Metropolitan Magistrate's Court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witnesses, they should do so before the Court of Metropolitan Magistrate.
10. The parameters of the jurisdiction of the High Court, in exercising jurisdiction under Section 482 Cr.PC, are now almost wellsettled. Although it has wide amplitude, but a great deal of caution is also required in its exercise. The requirement is, the application of well known legal principles involved in each and every matter. Adverting back to the facts of the present case, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 Cr.PC at this stage. More so, the defence as raised by the

petitioner in these petitions requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.PC and the same can only be proved in the Court of law.

11. In ***Sripati Singh (since deceased) Through His Son Gaurav Singh vs. State of Jharkhand & Anr., Criminal Appeal No. 12691270 of 2021 (Arising out of SLP (CRL) No. 252-253 of 2020)***, decided by the Hon'ble Supreme Court on 28.10.2021, it is observed and held as under:

"16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. „Security“ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

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22. These aspects would prima-facie indicate that there was a transaction between the parties towards which a legally recoverable debt was claimed by the appellant and the cheque issued by the respondent No.2 was presented. On such cheque being dishonoured, cause of action had arisen for issuing a notice and presenting the criminal complaint under Section 138 of N.I. Act on the payment not being made. The further defence as to whether the loan had been discharged as agreed by respondent No.2 and in that circumstance the cheque which had been issued as security had not remained live for payment subsequent thereto etc. at best can be a defence for the respondent No.2 to be put forth and to be established in the trial. In any event, it was not a case for the Court to either refuse to take cognizance or to discharge the respondent No.2 in the manner it has been done by the High Court.

Therefore, though a criminal complaint under Section 420 IPC was not sustainable in the facts and circumstances of the instant case, the complaint under section 138 of the N.I Act was maintainable and all contentions and the defence were to be considered during the course of the trial."

12. In ***Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr., Criminal Appeal No. 1497 of 2022***, decided by the Hon'ble Supreme Court on 11.10.2022, it is observed and held as under:

"Based on the above analysis of precedent, the following principles emerge:

(i) Where the borrower agrees to repay the loan within a specified timeline and issues a cheque for security but defaults in repaying the loan within the timeline, the cheque matures for presentation. When the cheque is sought to be encashed by the debtor and is dishonoured, Section 138 of the Act will be attracted;

(ii) However, the cardinal rule when a cheque is issued for security is that between the date on which the cheque is drawn to the date on which the cheque matures, the loan could be repaid through any other mode. It is only where the loan is not repaid through any other mode within the due date that the cheque would mature for presentation; and

(iii) If the loan has been discharged before the due date or if there is an „altered situation“, then the cheque shall not be presented for encashment."

13. In view of the above, as far as the contention of the Ld. Counsel for the petitioner that the petitioner had issued blank cheque to the respondent for the purpose of security has no force in it as it is trite law that when a cheque given for the purpose of security is dishonoured, Section 138 of the Negotiable Instruments Act, 1881 will be attracted.

14. Moreover, it is further contended by the Counsel for the petitioner that the cheque in question has been misused by the respondent as the same was not returned by the respondent to the petitioner even after newspaper publication dated 23.06.2022 and Legal Notices dated 13.08.2022 and 22.08.2022 regarding the closure of bank account of M/s Hindustan A.D.V

Axle Company in IDBI Bank as well as PNB Bank in June 2021 itself. In my considered opinion, the same does not cut much ice as the Hon'ble Supreme Court has time and again observed that the provisions contained in Section 138 of the NI Act are to be interpreted in a liberal manner so as to achieve the object for which the said provision has been enacted, and not only the cases of dishonour of cheques on account of insufficient funds or exceeding of arrangement but the cases involving dishonour of cheques on accounts of “*payment stopped*” and “*account closed*” have also been brought within the ambit of offence under the aforesaid provision. Reliance can also be placed upon the judgment of the Hon'ble Supreme Court in ***NEPC Micon Limited and Others vs. Magma Leasing Limited [(1999) 4 SCC 253]***.

15. Furthermore, the contentions of counsel for the petitioner that Section 138 N.I. Act initiated by the respondent is counter to the Civil Suit which has been filed by the petitioner against the respondent for the recovery of amounts and that the amount in question has been duly paid by the petitioner which is evident from the bank statements as well as the ledger account maintained by the petitioner during the course of regular business w.e.f. 01.04.2014 to 31.03.2017, are all issues which cannot be looked into at this stage and are a matter of trial.

16. Accordingly, no ground for quashing the CC NI Act 2459 of 2023 is made out and I also find no flaw or infirmity in the proceedings pending before the Trial Court. However, the Trial Court shall certainly consider and deal with the contentions and the defence of the petitioner in accordance with law.

17. The prayers are untenable in law. Hence, this Court does not deem it appropriate to issue notice to the respondent. Accordingly, the petition is dismissed. CRL.M.A. 12888/2023 is also disposed of accordingly.

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