

(VIA VIDEO CONFERENCING)

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

% **Date of Decision: 15.11.2021**

+ **CRL. M.C. 2857/2021**

JIGNESH KUMAR Petitioner

Through: Mr. Yashvardhan, Ms. Smita Kant
and ms. Kritika Nagpa, Advocates.

versus

M/s. ESTER INDUSTRIES LTD. & ORS. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR J. (ORAL)

CRL. M.A. No. 17982/2021 (for exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed of.

CRL. M.C. 2857/2021 & CRL M.A. 17981/2021 (for stay)

1. The present petition U/s 482 Cr.P.C. has been filed by the petitioner with the following prayers:

- a) Call for the records of Complaint Case No. 17074/2018 under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 filed by the Respondent no. 1 pending before the Ld. Court of Chief Metropolitan Magistrate, Patiala House Court, New Delhi;

- b) Quash the Summoning Order dated 12.12.2018 issued by the Ld. Court of Ms. Vijeta Singh Rawat, Patiala House Court, New Delhi under sections 138 and 142, Negotiable Instruments Act, 1881 qua the Petitioner;
- c) Quash the Complaint Case No. 17074/2018 filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 pending before the Court of Chief Metropolitan Magistrate, Patiala House Court, New Delhi qua the Petitioner Herein.

2. The brief facts of the case are that the Accused No. 1 M/s.Indu Polymers, is a Partnership Firm and is represented by its partners Accused No. 2 V.V. Satyanarayana and accused No. 3 Jignesh Kumar (Petitioner herein). The Accused No. 2 and 3 approached the Complainant/Respondent no.2 for purchase of Polyester PBT Chips, and Polycarbonates and requested the complainant to supply the said materials to the Accused. The accused in order to partly liquidate the outstanding amount and towards the legally enforceable debt, which has been due and payable to the complainant, issued the following four cheques in tune of Rs 12,00,000/-:

- a. Cheque bearing No.001004 dt.30-9-2014 for Rs.3,00,000/-and drawn on City Union Bank, Ranigunj, Secunderabad.
- b. Cheque bearing No.001003 dt.30-10-2014 for Rs.3,00,000/-and drawn on City Union Bank, Ranigunj, Secunderabad.
- c. Cheque bearing No.001005 dt.30-10-2014 for Rs.3,00,000/-and drawn on City Union Bank, Ranigunj, Secunderabad.

d. Cheque bearing No.001006 dt.30-9-2014 for Rs.3,00,000/-and drawn on City Union Bank, Ranigunj, Secunderabad.

3. The said four cheques on presentation were dishonored with remarks “Contact Drawer/ Refer to Drawer”on 30.10.2014 and 01.11.2014 respectively.

4. On 24.11.2014, Respondent No 2 served a legal notice dt. 24.11.2014 upon the accused persons, which was duly served upon them and even replied through their counsel vide reply dated 18.12.2014, but since no payment was made under the cheque, the complaint was filed on 31.12.2014 by respondent no. 2/Complainant.

5. The Petitioner has assailed the Summoning Order dated 12.12.2018 vide which he was summoned by the Ld.MM for offences U/s 138 and 142 of the N.I. Act.

6. It is vehemently urged by the Ld. counsel for the petitioner that there are no allegations against the petitioner and though he was a partner in the respondent no. 2 firm, but was neither into day-to-day affairs of the partnership firm nor has any knowledge about the alleged transaction of the business of partnership firm. It is further submitted that the present petitioner is not a signatory to the cheques in question and the said cheques were issued by other Managing Partners.

Ld. Counsel for the petitioner has placed reliance on the following judgments:

- ***Katta Sujatha v. Fertilizers and Chemicals Travancore Ltd. And Anr. [(2002) 7 SCC 655]***

- ***K. Srikanth Singh v. North East Securities Ltd. And Anr***
[(2007) 12 SCC 788]
- ***Smt. Meenu Goyal v. M/S Micromax Informatics Ltd. &Ors.***
[2021 (276) DLT 80]
- ***MonabenKetanbhai Shah and Ors. v. State of Gujarat and Ors. [AIR 2004 SC 4274]***
- ***Sham Sunder v. State of Haryana [(1989) 4 SCC 630]***
- ***Pooja Ravinder Devidasani v. State of Maharashtra and Anr. [(2015) 3 SCC (Cri) 378]***
- ***Sabitha Ramamurthy v. R.B.S.Channabasavaradhya [Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, (2006) 10 SCC 581 : (2007) SCC (Cri) 621]***

7. As far as the judgments relied upon by the Ld. Counsel for the petitioner are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments, but with due regard, the same are not applicable to the facts of the present case.

8. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.P.C. which have been discussed in various judgments time and again and 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 honored and if it is not honored, 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 intentions 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.P.C, 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 an 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.P.C. & under Section 263(g) of the Cr.P.C. Along with this plea, he can file necessary documents and also make an application, if he is so advised, under Section 145(2) of the N.I. Act to recall the complainant to cross examine him on his plea of defense. However, only after disclosing his plea of defence, he can make an application that the case should not be tried summarily but as a summons trial case.

9. An offence under Section 138 of the N.I. Act is technical in nature and defences, which an accused can take, are inbuilt; for instance, the cheque was given without consideration, the accused was not a Director/partner at that time, accused was a sleeping partner or a sleeping Director or that accused was not a signatory of the cheque or cheque was given as a security etc, etc., the onus of proving these defences is on the

accused alone, in view of Section 106 of the Indian Evidence Act, 1872. Since the mandate of the legislature is the trial of such cases in a summary manner, the evidence already given by the complainant by way of affidavit is sufficient proof of the offence and this evidence is not required to be given again in terms of section 145(1) of the N.I. Act and has to be read during the trial. The witnesses i.e., the complainant or other witnesses can be recalled only when the accused make such an application and this application must disclose the reason why the accused wants to recall the witnesses and on what point the witnesses are to be cross-examined

10. 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 defense and the burden cannot be shifted to complainant. There is no presumption that even if an accused fails to bring out his defense, he is still to be considered innocent. If an accused has a defense against dishonor of the cheque in question, it is he alone who knows the defense and responsibility of spelling out this defense to the Court and then proving this defense is on the accused. Once the complainant has brought forward his case by giving his affidavit about the issuance of cheque, dishonor of cheque, issuance of demand notices 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.

11. 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 defense evidence byway of affidavits and documents. Thus, an accused who considers that he has a tenable defense 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 defense evidence and if he is so advised, he can also file an application for recalling any of the witnesses for cross examination on the defense taken by him.

12. In view of the procedure prescribed under the Cr.P.C, 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 under Section 145(2) of N.I. Act for recalling a witness for cross-examination by an accused in 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.P.C., 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.

13. In the instant case the respondent no. 2/complainant in paragraph (1) and subsequent paragraphs of his complaint under Section 138 and 142 of N.I. Act has made specific averments that the Accused No.1 is a Partnership Firm and is represented by its partners Accused No. 2 and 3. Further, stating that the Accused No. 2 and 3 approached the Complainant for purchase of Polyester PBT Chips, and Polycarbonates and requested the complainant to supply the said materials to the Accused. It is specifically averred that the Accused had been purchasing the goods from the Complainant from time to time and invoices were forwarded against the said supplies by the Complainant and the accused used to make payments, with respect to the said invoices, which were duly given credit by complainant in their books of account. However, the Accused in order to partly liquidate the outstanding amount and towards the legally enforceable debt, which has been due and payable to the complainant, issued the four cheques, which were dishonored. The plea raised by the Ld. Counsel for the petitioner that the present petitioner was only a partner in the respondent no. 2 firm, but was neither into day-to-day affairs of the partnership firm nor has any knowledge about the alleged transaction of the business of partnership firm cannot be considered at this preliminary stage since such defense can only be considered during the stage of trial.

14. Now, coming to the jurisdiction, suffice it to say that the Court, in exercise of its jurisdiction under Section 482 Cr.P.C. cannot go into the truth

or otherwise of the allegations made in the complaint or delve into the disputed question of facts. The issues involving facts raised by the petitioner by way of defence can be canvassed only by way of evidence before the Trial Court and the same will have to be adjudicated on merits of the case and not by way of invoking jurisdiction under Section 482 Cr.P.C. at this stage.

15. Upon analyzing the provisions of the N.I. Act, it is clear that Section 138 of the Act spells out the ingredients of the offence as well as the conditions required to be fulfilled before initiating the prosecution.

16. These ingredients and conditions are to be satisfied mainly on the basis of documentary evidence, keeping in mind the presumptions under Sections 118 and 139 of the N.I. Act and Section 27 of the General Clauses Act, 1897 as well as the provisions of Section 146 of the Act.

17. The provisions of Sections 142 to 147 lay down a Special Code for the trial of offences under the Chapter XVII of the N.I. Act. While considering the scope and ambit of the amended provisions of the Act, the Supreme Court in *Mandvi Co Op Bank Ltd v. Nimesh B. Thakore*, AIR 2010 SC 1402, has held that the provisions of Sections 143, 144, 145 and 147 expressly depart from and override the provisions of the Cr.P.C, the main body of adjective law for criminal trials. The Supreme Court has further held as under:-"17. It is not difficult to see that sections 142 to 147 lay down a kind of a special Code for the trial of offences under Chapter XVII of the Negotiable Instruments Act and sections 143 to 147 were inserted in the Act by the Negotiable Instruments Amendment and Miscellaneous Provisions)

Act, 2002 to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising on the right of the accused for a fair trial."

18. The parameters of the jurisdiction of the High Court in exercising jurisdiction under Section 482 Cr.P.C, are now almost well-settled. 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 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.P.C. at this stage. More so, the defence raised the petitioners in the petition requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.P.C. and the same can only be proved in the Court of law. Reliance can be placed upon "State of Madhya Pradesh Vs. Yogendra Singh Jadon & Anr"., Criminal Appeal No. 175 of 2020 (Arising out of SLP (Criminal)No. 172 of 2017) decided by the Hon'ble Supreme Court on January 31, 2020 in which it has been held that "the power under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised where the allegations are required to be proved in Court of law".

19. In the instant case, all these issues mentioned herein above involves disputed question of facts and law and cannot be decided unless and until the parties go to trial and lead their respective evidence. Though invariably the

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initial phase of a litigation under Section 138 of the N.I. Act depends on how well the pleadings or the allegations are laid down or articulated, by the complaint, in the ultimate analysis it is the trial that alone can bring out the truth so as to arrive at a just and fair decision for the parties concerned.

20. Accordingly, I 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 defense of the petitioner in accordance with law.

21. The prayers are untenable in law. Hence, this court does not deem it appropriate to issue notice to the respondents. Accordingly, the petition is dismissed and CRL M.A. 17981/2021 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

NOVEMBER 15, 2021

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