



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: December 22, 2023.

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Pronounced on: January 05, 2024.

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CRL.L.P. 91/2022

MR. SACHIN JAIN & ORS.

..... Petitioners

Through: Mr. Manu Bansal and Mr. Rohit
Nain, Advocates

Versus

MR. RAJESH JAIN

..... Respondent

Through: Ms. Aashi Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The petitioner, vide the present leave petition under Section 378(4) of the Code of Criminal Procedure, 1973, seeks leave to appeal against the judgment dated 02.09.2021 passed by the learned Metropolitan Magistrate, NI Act-04, Central District, Tis Hazari Courts, Delhi [*learned MM*] in CC No.516578/2016 titled "*Sukhmal Chand Jain vs. Rajesh Jain*" filed under Section 138/142 of the Negotiable Instruments Act, 1881 [*NI Act*] and seeks to punish the respondent in accordance with provisions of the NI Act.

2. As per complaint, the respondent/ accused [hereinafter referred to as '*Respondent*'] had issued cheques bearing number(s) 001868, 001781 and 001791 dated 04.09.2014, 04.09.2014 and 08.09.2014 respectively, each for an amount of Rs.5,00,000/- (*Rupees Five Lakhs Only*) to the petitioner/ complainant [hereinafter referred to as '*Petitioner*'] therein, in discharge



of his legal liability. Upon presentation, the said three impugned cheques were returned twice. *Firstly*, vide return memo dated 18.09.2014 with remarks “*Funds Insufficient*” and *secondly*, vide return memo dated 01.12.2014 with remarks “*Account Blocked*”, and the same was conveyed to the complainant on 04.12.2014.

3. In pursuance thereof, a Legal Notice dated 26.12.2014 was sent to the respondent by the counsel for the petitioner. Receiving no response thereto, a complaint was made by the petitioner before the learned MM.

4. In the impugned judgment, while the learned MM found all the other ingredients to constitute an offence under Section 138 of the NI Act fulfilled, however, the complaint against the respondent was not found maintainable as the petitioner failed to prove that the cheques were drawn on an account maintained by the respondent on the date of presentation of the three impugned cheques, and the respondent was acquitted of the offence under Section 138 of the NI Act.

5. Hence, the present petition before this Court, wherein learned counsel for the petitioner submits that the learned MM erred in ignoring the settled position of law set out by the Hon’ble Supreme Court as well as the Hon’ble High Court(s), who have rejected the strict interpretation of Section 138 of the NI Act, while accommodating the situations arising out of the deliberate acts/ omissions of the accused person such as ‘*account closed*’, ‘*stopped payment*’ and ‘*signature mismatched*’ etc. as such instances have been treated as species of the ingredient of the offence under Section 138 of the NI Act i.e., ‘*amount of money standing to the credit of account is insufficient*’. Reliance in this regard is placed upon ***Laxmi Dyechem vs. State of Gujarat*** (2012) 13 SCC 375.



6. Learned counsel for the petitioner then placing reliance upon ***Pankaj Mehra & Anr. vs. State of Maharashtra & Ors.*** (2000) 2 SCC 756 submits that jurisprudence of Section 138 of the NI Act provides the drawer two opportunities, *firstly*, presentation of cheque and *secondly*, a 15 day statutory period after receipt of Legal Notice to make the payment thereof. Therefore, non-payment towards the cheque during this 15 day period manifests the *malafide* of the accused person.

7. Lastly, relying upon the order dated 31.10.2013 of a Coordinate Bench of the High Court of Karnataka in Crl. P. No. 3879/2013 titled ***Mrs. Avneet Bedi vs. Mr. Navin Malik***, learned counsel for the petitioner further submits that even if the account is deemed to be ‘*not maintained*’ by the accused as the same was blocked, the accused will have the onus to establish his *bona fide* qua the availability of sufficient funds in such account to honour the cheque issued.

8. Learned counsel for the respondent on the other hand submits that the present petition is not maintainable as the judgment of the learned MM is found upon well settled law qua the issue of ‘*account maintained*’ by the drawer. Relying upon ***Modi Cements Limited vs. Kuchil Kumar Nandi*** (1998) 3 SCC 249 and ***Kusum Ingots & Alloys Ltd. & Ors. vs. Pennar Peterson Securities Ltd. & Ors.*** (2000) 2 SCC 745, learned counsel for the respondent submits that the first and foremost ingredient of the offence under Section 138 of the NI Act is that the cheque shall be “... *drawn by a person on an account maintained by him with a banker ...*”. He further submits that, for an account to be ‘*maintained*’, it is essential that the drawer is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom.



9. Learned counsel for the respondent also submits that the impugned cheques were dishonoured for reasons beyond control of the respondent. Relying upon *Vijay Choudhary vs. Gyan Chand Jain* 2008 SCC OnLine Del 554, *Prem Chand Gupta vs. State and Ors.* 2010:DHC:379 and *Onkar Nath Goenka vs. Gujarat Lease Finance Ltd.* 2008 SCC OnLine Del 1593, learned counsel for the respondent submits that in fact it is only for reasons beyond control of the respondent that the respondent could not maintain his account and therefore the first ingredient of the offence of Section 138 of the NI Act does not stand proved.

10. Rebutting the judgments relied upon by the petitioner, the learned counsel for the respondent submits that the facts therein are very different as the reason for dishonour therein is/ was within the control of the drawer, whereas in the present case, the account of the respondent was blocked at the instance of the Investigating Officer in FIR No.237/2014, wherein the petitioner herein, is also one of the complainant.

11. Learned counsel for the petitioner in his rejoinder arguments once again reiterated the submissions made earlier.

12. This Court has heard the learned counsels for the parties and perused the documents on record including the judgments relied upon by them.

13. Before advertng to the merits involved and deciding the contentions raised by the learned counsel for the petitioner on merits, it is borne out from the facts herein that the primary issue for consideration before this Court is whether the account on which the three impugned cheques were drawn can be said to be *maintained* by the drawer when the said account blocked/frozen/attached on the orders of an authority.



14. It is noteworthy that a Co-ordinate Bench of this Court in ***Ceasefire Industries Ltd. vs. State & Ors.*** III (2017) DLT (Crl.) 951 has held that the accused can't be faulted, if the account, from which the cheque in issue is drawn, is blocked, for the reason(s) beyond the control of the drawer. This Court is also in consonance with the finding of the Co-ordinate Bench of this Court. Therefore, in the opinion of this Court, offence of Section 138 of NI Act is not made out, in case the account is blocked/frozen/ attached on the order of some statutory authorities. This is more so because the blocking/freezing/attaching of the said bank account cannot be said to be a voluntary act of the drawer. This Court also finds able support from ***Shri Vijay Chaudhary (supra)***, wherein once again, a Co-ordinate Bench of this Court, after relying upon ***Modi Cements (supra)***, held as under:-

"23. ... As held by the Hon'ble Supreme Court in Modi Cements (supra), the issuance of the cheque without having sufficient balance in the account of the drawer does not by itself tantamount to the commission of the offence under section 138, NI Act, however. in the facts of this case, the petitioner could not have, even if he would have so de sired. either deposited funds in his account or otherwise made arrangements for the payment of the cheque upon its presentation by entering into an agreement with the bank, since there was a court attachment on the bank account of the drawer. This Court attachment was by a Court ceased of the case arising out of FIR No. 283/2005 u/sec 406/420/467/468/471 & 120-B IPC registered with PS. Connaught Place. The act of attachment of the bank account of the drawer/petitioner cannot be said to be a voluntary act of the drawer."

15. Interestingly, advertng to the facts before this Court, this is a case wherein the account wherefrom the three impugned cheques in issue were drawn and were not encashed as the said account was blocked for reasons beyond the control of the said drawer, i.e. the respondent herein. Thus, the same was not deliberate and was beyond the control of the respondent.



16. As such, this Court comes to the conclusion that the petitioner was unable to prove the first ingredient of Section 138 of NI Act, as was held by the Ld. MM in the impugned judgment.

17. Moreover, the reliance placed on the judgments by the learned counsel for the petitioner is misplaced as they are on different set of facts and circumstances and thus they are not applicable to the facts herein.

18. This Court is also further in agreement with the findings rendered by the learned MM, as there is no error, illegality and/ or perversity in the impugned judgment under challenge. Considering the existing facts and circumstances, the complaint filed by the petitioner before the learned MM as it was, is *per se* not maintainable. In view thereof, as the present petition is without any merit, it requires no interference.

19. Accordingly, the present leave petition is dismissed.

SAURABH BANERJEE, J.

JANUARY 05, 2024

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