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

Reserved on: 15th October, 2014
% **Date of Decision: 31st October, 2014**

\+ CRL. M.C. 2895/2012

VIJAY CABLE INDUSTRIES & ANR. ..... Petitioners
Through: Mr. R.M. Tufail with Mr. Vishal Raj Sehijpal and Mr. Zuber Khan, Advocates.

versus

RELIANCE INDUSTRIES LTD. & ANR. .....Respondents
Through: Mr. Mohit Mathur with Mr. Somiram Sharma, Advocates.
Mr. Karan Singh, APP for the State.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioners by filing the present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred to as 'Cr.P.C.') have challenged the order dated 27.07.2012 passed by learned Additional Sessions Judge-02, SE, Saket Courts, New Delhi whereby criminal revision filed by the petitioners was dismissed.

2. Brief facts of the case are that the complainant is dealing in sale and supply of Poly Vinyl Chloride (PVC) and other allied products, the respondent No.1 supplied PVC to the petitioner company. On 15.02.1998 a sum of Rs.3,96,58,390.27 paise (Rupees Three crore

ninety six lakhs fifty eight thousand three hundred ninety and twenty seven paise) excluding interest and sales tax liability was due and outstanding towards the legal debt and the same was admitted by the petitioners. In liquidation of the said amount the petitioners issued four cheques bearing Nos.356172 dated 17.02.1998 for Rs.35,00,000/- (Rupees Thirty five lakhs), 356174 dated 19.02.1998 for Rs.1,37,00,000/- (Rupees One crore thirty seven lakhs), 356180 dated 15.02.1998 for Rs.40,00,000/- (Rupees Forty lakhs) and 356175 dated 18.02.1998 for Rs.1,00,00,000/- (Rupees One crore) all drawn on Oriental Bank of Commerce, Connaught Place, New Delhi. On presentation, the said cheques were dishonoured with the remarks 'account transferred to protested bill account'. Despite service of legal notice dated 10.03.1998 the petitioner failed to make the payment of these cheques. As a result, respondent No.1 filed a complaint under Section 138 of Negotiable Instruments Act, 1881 regarding dishonour of cheques.

3. Vide order dated 22.06.2001, the accused persons were summoned by the trial court. Mr. Tilak Raj Bhatia, respondent No.3 expired on 06.05.2003. Vide order dated 31.03.2012, learned trial court observed that respondent No.1 herein/ complainant does not want to proceed against accused No.4 and Ms. Priya Bhatia and notice under Section 251 Cr.P.C. was subsequently framed against the petitioners.

4. Aggrieved by the said order the petitioners preferred Criminal Revision No.11/2012 which was dismissed by learned Additional Sessions Judge-02, SE, Saket Courts, New Delhi vide order dated

27.07.2012.

5. Feeling aggrieved by the said order, the petitioners have filed the present petition.

6. Learned counsel for the petitioners urged that the cheques in question were neither returned due to 'insufficient funds' nor for the reason 'exceeded arrangement'. The cheques in question were returned with the remarks 'account transferred to protested bill account' and, therefore, the provisions of Section 138 of Negotiable Instruments Act, 1881 are not attracted.

7. Learned counsel for the petitioners also submitted that there is no specific allegation in the complaint against any of the accused persons. The complaint is signed by Mr. D.D. Bhargava on behalf of respondent No.1 but he did not possess any valid authority to sign and institute the complaint.

8. Another submission of learned counsel for the petitioners is that the alleged demand notice dated 10.03.1998 was never served upon the petitioners. The acknowledgment card filed by respondent No.1 does not bear the signatures of the petitioner and, therefore, the complaint is not maintainable.

9. *Per contra*, learned counsel for respondent No.1/ complainant contended that petitioner No.2 Vijay Kumar Bhatia is Managing Partner of petitioner No.1 and the same was specifically mentioned in the complaint. He also pointed out that statutory demand notice dated 10.03.1998 was not sent to the accused Ms. Priya Bhatia and there was

no allegation against her, therefore, respondent/ complainant did not want to proceed against her and consequently her name was dropped. He further submitted that demand notice dated 10.03.1998 was duly served upon the petitioners. The postal receipts and the acknowledgement cards have been filed before the trial court.

10. I have carefully considered the submissions made by learned counsel for both the parties and have gone through the material on record.

11. Before adverting to the facts of the present case, it will be appropriate to reproduce relevant provisions of Section 138 of the NI Act:-

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account:
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> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may extend to two years], or with fine which may extend to twice the amount of the cheque, or with both:
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> Provided that nothing contained in this section shall apply unless: -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

12. On a bare perusal of aforesaid provisions of Section 138 of the NI Act, it is clear that Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, purport to discharge their liability by issuing cheque without having no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on unscrupulous drawers of cheques. However, with a view to avert unnecessary prosecution of an honest drawer and with a view to give an opportunity to him to make amends, the prosecution under Section 138 of the Act has been made subject to certain conditions. These conditions are stipulated in the proviso to Section 138 of the NI Act. The legislature in its wisdom has used

words that the drawer or the holder of the cheque as the case may be in due course should have made a demand for payment of the cheque amount by giving a notice in writing to the drawer of the cheque. It does not stipulate the manner in which a notice should be despatched.

13. In '**Laxmi Dyechem vs. State of Gujarat and Ors.**', *(2012) 13 SCC 375*, Hon'ble Supreme Court of India has observed that two contingencies envisaged under Section 138 of the Act must not be interpreted strictly or literally. It was further observed that reasons for dishonour such as 'account closed', 'payment stopped', 'referred to the drawer', 'signatures do not match', 'image is not found' constitute dishonour within the meaning of Section 138 of the NI Act.

14. Further, the Apex Court in '**D. Vinod Shivappa vs. Nanda Belliappa',** *(2006) 6 SCC456,* laid down:-

> **"15.** We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will

> be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely, the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. Therefore, it would be premature at the stage of issuance of process, to move to the High Court for quashing of the proceeding under Section 482 of the Code of Criminal Procedure. The question as to whether the service of notice has been fraudulently refused by unscrupulous means is a question of fact to be decided on the basis of evidence. In such a case the High Court ought not to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.**"**

15. In view of the authoritative pronouncement in **D. Vinod Shivappa's** (supra) it can be said that since it is nowhere provided that notice should be sent by "post" rather the presumption is that notice is dispatched with correct address, the same will be treated as ' duly served' unless the addressee proves that it was not actually served. The burden of proving the same is on the addressee.

16. As regards the submission of learned counsel for the petitioners that the complaint has not been filed by a competent person and Mr. D.D. Bhargava was not authorized to sign and institute the complaint as there is no valid power of attorney issued in his favour, it may be mentioned that respondent No.1/ complainant has filed copy of power of attorney dated 17.04.1996 executed by complainant company and the said power of attorney was executed in terms of Resolution of Board of Directors dated 09.11.1992.

17. In the present case, the pleas taken by the petitioners that notice dated 10.03.1998 was not served and the complaint has been

validly instituted or not is matter of evidence and proof. The law does not permit a mini trial at this stage. At this juncture, it would also be premature to say that the notice dated 10.03.1998 was not served on the petitioners and whether the proceedings arising therefore can or cannot be quashed under Section 482 of Cr.P.C.

18. In view of the above, I do not find any illegality and infirmity in the order passed by the learned trial court. Accordingly, the petition is dismissed.

Crl. M.A. No.14364/2012

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

OCTOBER 31, 2014
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