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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29.07.2022

+ CRL.M.C. 2270/2022 & CRL.M.A. 9578/2022

PANCHSHEEL BUILDERS Petitioner
Through: Mr. Sanjeev Arora, Adv.

versus

THE STATE NCT OF DELHI & ORS. Respondents
Through: Mr. Aashneet Singh, APP for State
Mr. Santosh Kumar, Mr. Sanborali,
Adv.
Mr. Ali, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking quashing and setting aside of the proceedings dated 28.10.2020 pending before the Court of Metropolitan Magistrate, NI Act, Central-01, Court No. 201, Second floor, Tis Hazari Courts in Complaint Case No. 3033/2020 titled '*Avinash Kumar vs. Ankit Sharma and Ors*' u/s 138 of the Negotiable Instruments Act, 1881.
2. The copy of the counter-affidavit of respondent No. 2 has been handed over in Court today and is taken on record.
3. It is stated that an agreement to sell dated 04.04.2018 was executed between the complainant (respondent No.2 herein) and one Mr. Muninder Sharma with regard to flat bearing No. T3-602 measuring 1250 sq ft. in Panchsheel, Sector 1, Noida Extension for a sum of Rs. 41,50,000/-.



4. Accordingly, respondent No. 2 made a payment of Rs. 37,50,000/- to respondents 3 to 5 for purchase of the said flat.
5. It is stated that respondent Nos. 3 to 5 used the letter head of the petitioner and hence the petitioner was throughout in the know that it is respondent Nos. 3 to 5 who were misusing the name.
6. It is further stated that when the respondent No. 2 complained about the acts of cheating, respondent No. 4 issued 4 cheques for a total of Rs. 37,50,000/- to return the respondent No. 2, the sale consideration.
7. All the cheques on presentation were bounced and this led to the filing of the complaint in question.
8. It is stated by Mr. Rajiv Mishra, learned counsel for the petitioner that the petitioner have no privity of contract with respondent No. 2.
9. The petitioner states that he has not issued the cheques in question nor has he received a single penny from the sale transaction.
10. It is only a flat which was in the building being developed by the petitioner that the petitioner's name has been dragged into the controversy.
11. Mr. Ali, learned counsel for the respondent has drawn my attention to a judgment of the High Court of Bombay titled '*Kamal Galani vs. Assistant Commissioner of Income Tax*' being W.P.(G) 1033/2017 to argue that the petitioner had filed a revision petition challenging the summoning order which had been unconditionally withdrawn by him. Therefore, the petitioner cannot maintain the present writ petition, as no liberty was sought from the revision court to file the present petition.
12. The mandate under section 138 is clear. It is only to be invoked where a cheque has been drawn by a person for any amount of money in discharge of part or whole of any debt or liability, and that cheque remains unpaid on



account of insufficient funds lying to the credit of the drawer of the cheque or if it exceeds the amount arranged to be paid from that account.

13. In the present case, the petitioner company has not issued the cheques in question nor was there any debt or liability due from them. There has been no averment in the 138 complaint as regards to any debt owed by the petitioner to respondent no.2.

14. Section 138 of the Negotiable Instruments Act, 1881 was enacted to cast a criminal liability to punish a person who :-

- a) who issues a cheque
- b) which is with regard to discharge of a particular debt or liability
- c) that cheque is thereafter dishonoured on presentation

15. It was enacted to hold those individuals and companies liable who issued cheques unscrupulously and who actually had no intent of discharging the liability cast upon them.

16. It is pertinent to note that the ingredients of Section 138 NI Act have not been fulfilled in the present case as the cheques in question have not even been issued by the petitioner company thereby not even meeting the first ingredient of the requirement u/s 138 Negotiable Instruments Act, 1881. The petitioner company is neither the drawer of the cheque nor is there any debt or liability shown against the petitioner-company.

17. It has been held in '*State of Haryana & Ors v. Bhajan Lal & Ors*' 1992 SCC (Cri) 426 that :-

“ 102. In the backdrop of the interpretation of various relevant provisions of the Code under Chapter XIV and the principles of law enunciated by this Court in a series of decisions relating to the exercise of extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced



above, we give the following categories by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;.... ”

18. Given the aforesaid, the petitioner company has sufficiently shown that they had no role in the case at hand and cannot thus be held liable for dishonour of a cheque which was not even issued by them or on their behalf in the first place. In these circumstances, where there are no ingredients made out against the petitioner-company, continuation of proceedings against them will be an abuse of the process of law.

19. The fact that the revision petition had been filed and had been withdrawn will not come in the way of the inherent jurisdiction exercisable by this Court u/s 482 Cr.P.C. where the complaint itself fails to disclose the ingredients of section 138 Negotiable Instruments Act, being made out against the petitioner.

20. For the aforesaid reasons, the petition is allowed and complaint No.



NEUTRAL CITATION NO: 2022/DHC/003035

3033/2020 and the impugned summoning order dated 28.10.2020, only against the petitioner is hereby set aside. The observations made herein are only for the purpose of adjudicating the present petition and shall not come in the way of deciding the FIR filed by the complainant against the petitioner company and/or its officers.

JULY 29, 2022/dm

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)

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