

\$~32

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

Reserved on: September 27, 2022

Decided on: November 14, 2022

+ **CRL.M.C. 4100/2022 & CRL.M.A. 16919/2022(Stay)**

GUNEET BHASIN

..... Petitioner

**Through: Mr. Mandeep Singh
Vinaik, Mr. Pawan
Kumar Dhiman and
Ms.Simmi Bhamrah
Kumar, Advocates.**

versus

**STATE OF NCT OF DELHI &
ANR. & ORS.**

..... Respondents

**Through: Mr. Hitesh Vali , APP
with Ms. Akanksha
Sharma, Advocate for
State/R-1.
Ms. Sonal Anand,
Mr.Aayush Sai and
Ms.Surbhi Singh,
Advocates for R-2.**

%

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present petition is filed under section 482 Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) for quashing the criminal complaint titled as **Amrit Pal Singh**

Bedi V International Trenching Pvt. Ltd. & Ors. bearing CC no. 6735/2019 and the summoning order dated 29.08.2019 (hereinafter referred to as the **“impugned order”**) passed by the court of Ms. Neha Pandey, Metropolitan Magistrate-03, West , Tis Hazari (hereinafter referred to as the **“trial Court”**).

2. The respondent no. 2/complainant (hereinafter referred to as the **“respondent no. 2”**) has filed a complaint under section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as the **“NI Act”**) titled as **Amrit Pal Singh Bedi V International Trenching Pvt. Ltd. & Ors.** bearing CC no. 6735/2019 on the allegations that the accused no. 1 i.e. M/s International Trenching Pvt. Ltd. (hereinafter referred to as the **“accused no. 1”**) is engaged in the business of trenching/fibre optic laying and allied services. The accused no. 2 (hereinafter referred to as the **“petitioner”**) and the accused no. 3, namely, Sumit Bhasin (hereinafter referred to as the **“accused no. 3”**) are the Directors of the accused no.1. The accused no. 4, namely, Summy Bhasin (hereinafter referred to as the **“accused no. 4”**) is handling the finances and accounts of the accused no. 1. The

petitioner, accused no. 3 and 4 are responsible for day-to-day affairs of the accused no. 1. The petitioner and the accused no. 4 on behalf of the accused no. 1 approached the respondent no. 2 for availing the services for their business in upcoming projects and the respondent no. 2 had provided services from time to time and for which Rs.46,60,000/- was agreed to be paid by the accused no. 1 to the respondent no. 2 on or before 15.07.2018. The petitioner, accused no. 3 and 4 had failed to make the timely payment to the respondent no. 2 and thereafter, entered into a MoU dated 26.07.2018 whereby the petitioner and the accused no. 3 and 4 had agreed to pay Rs.47,53,519/- to the respondent no. 2 on or before 27.02.2019. The petitioner and the accused no.4 on 19.01.2019, issued a cheque amounting to Rs.47,53,519/- dated 15.04.2019 bearing no. 000192 drawn on HDFC Bank, Rajouri Garden in favour of the respondent no. 2 under the signature of the petitioner towards the discharge of liability. A confirmation letter under the signature of the petitioner was also issued. The accused no. 1 including the petitioner on 27.02.2019 again requested for extension of time till 01.07.2019 to make the

payment of Rs.47,53,519/- alongwith confirmation letter dated 18.03.2019. The petitioner on 27.06.2019, sent an e-mail to the respondent no. 2 asking him not to present the cheque in the bank for encashment which was replied by the respondent no. 2 on 28.06.2019. The respondent no. 2 presented the said cheque to his Banker i.e. the Syndicate Bank, Rajouri Garden on 03.07.2019 which was returned back unpaid due to the reason “account blocked” vide return memo dated 04.07.2019. Thereafter, the respondent no. 2 served a legal notice dated 18.07.2019 through counsel on the official address of the accused no. 1, petitioner and the accused no. 3 and 4 which was returned back with the remarks *"always door locked"/not received despite repeated attempts and leaving intimation.* The respondent no. 2 being aggrieved, filed a complaint.

3. The trial Court vide impugned order, took the cognizance for the offence punishable under section 138 of the NI Act against the accused no. 1, petitioner and the accused number 3.

The impugned order reads as under:-

This is complaint filed for offence punishable under Section 138 N.I. Act. Complaint, affidavit of

evidence and other annexed documents perused. The present complaint has been filed within the limitation period.

In matter of "A. C. Narayanan Vs. State of Maharashtra & Anr." (2014) 11 Supreme Court Cases 790, Full Bench of Hon'ble Supreme Court of India has held as under:-

"29. From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act."

The complaint, affidavit of evidence and documents considered in light of above cited judgment. In the opinion of this Court, there is no need to examine the complainant on oath as present

complaint is duly supported by verification in the form of affidavit of the complainant. Thus, there are prima facie sufficient grounds for proceeding against accused nos. 1 to 3 and not accused no. 4 for offence punishable under Section 138 N.I. Act.

Hence, issue summons against accused nos. 1 to 3 on filing of PF/RC returnable on 04.12.2019.

4. The petitioner being aggrieved by the impugned order, filed the present petition to challenge the impugned order on the ground that the respondent no. 2 has failed to file a cheque return memo before the trial Court and only the photocopy of the cheque return memo was submitted before the trial Court. It is further stated that a document purporting to be a cheque return memo filed by the respondent no. 2 before the trial Court is not admissible in law and cannot be look into. The cheque return memo filed by the respondent no. 2 was without any bank seal and mark which fails the presumption of section 146 of the NI Act. The respondent no. 2 has not filed original cheque return memo and the document so submitted by the respondent no. 2 is an internal document of the bank which was not certified by the Banker under the provisions of the Bankers Book (Evidence) Act, 1891. It is a mandate of the law that the cheque return memo is

to be presented before the Court before the summoning of the accused. The trial Court has not taken into account the alleged illegality in the complaint and as such the complaint and the summoning order are not tenable and are not maintainable *ab initio*. The trial Court was expected to scrutinize the material on record carefully and apply its judicial mind which has not been done by the trial Court. The impugned order is suffered from lack of application of mind and is a result of application of mechanical mind. The alleged cheque return memo is an incomplete document and moreover the reason given for the cheque bounce is not covered under section 138 of the NI Act. The perusal of the alleged cheque return memo reflects that the same has not been certified by the Banker under the provisions of the Bankers Book (Evidence) Act, 1891. It is prayed that the complaint bearing no. 6735/2019 and the impugned order qua the petitioner be quashed.

5. The counsel for the petitioner advanced oral arguments on the basis of pleas and grounds as taken in the present petition. The counsel for the petitioner in the brief note submitted in

support of the argument, primarily stated that the alleged cheque return memo is an internal document of the bank and is not a cheque return memo for strict sense and on the basis of which, the summoning order cannot be passed. The counsel for the petitioner relied upon the judgment passed by the Himachal Pradesh High Court in **Rajinder Singh Verma V Haji BK Manchanmani** Cr. Appeal No. 582 of 2017.

6. The perusal of the judgment passed by learned Single Judge of the Himachal Pradesh High Court reflects that he has referred the section 146 of the NI Act to consider the cheque return memo. After referring the section 146 of the NI Act, it has been observed that the cheque return memo is not carrying the official seal or mark of the concerned bank and due to this reason, the presumption under section 146 of the NI Act was not adopted.

7. The section 138 of the NI Act deals with and necessary ingredients of it are as following:-

138 Dishonour of cheque for insufficiency, etc., of funds in the account. —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 provisions of this Act, be punished with imprisonment for¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: 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,²⁰ [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.

8. The Supreme Court in **K. Bhaskaran V. Sankaran Vaidhyan Balan** AIR 1999 SC 3762 held that the basic ingredients to fulfill under section 138 are mentioned below:-

The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

9. The cheque return memo is a memo informing the payee's banker and the payee about the dishonour of a cheque. When the cheque is dishonoured, the drawee bank immediately issues a cheque return memo to the payee's banker mentioning the reason for non-payment. The purpose of the cheque return memo is to give the information of the holder of the cheque that his cheque on presentation could not be encashed due to the variety of reasons as mentioned in the cheque return memo. As per the section 146 of the NI act, the cheque return memo on presentation

presumed the fact of dishonour of the cheque unless and until such fact is disproved. Neither section 138 nor the section 146 of the NI act has prescribed any particular form of cheque return memo. The section 138 of the NI Act does not mandate any particular form of cheque return memo which is nothing but a mere information given by the Banker of the due holder of a cheque that the cheque has been returned as unpaid. If the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is not required to be covered under section 4 of the Bankers Book (Evidence) Act, 1891. If there is any infirmity in the cheque return memo, it does not render entire trial under section 138 of the NI Act as nullity.

10. The perusal of the alleged cheque return memo which is under challenge reflects that the cheque bearing no. 000192 dated 15.04.2019 amounting to Rs.47,53,519/- could not be encashed due to the “account blocked”. If it is presumed that there is any irregularity or illegality in the format of the said cheque return

memo then it can be addressed during the course of trial. The petitioner has not disputed the issuance of cheque under his signature and the dishonour of the cheque by the concerned Banker.

11. The grounds as taken by the petitioner to attack the impugned order are without any factual and legal basis. There is no infirmity or illegality in the impugned order. The concerned Court has not committed any illegality while relying on the said cheque return memo dated 04.07.2019 before issuance of the summons against the accused no. 1 to 3 which also includes the petitioner as accused no. 2. The decision delivered by the Himachal Pradesh High Court does not provide any help to the petitioner.

12. The present petition is misconceived and it appears that, it has been filed to delay the proceedings of the case. Accordingly, the present petition alongwith pending applications, if any, is dismissed. The trial Court is directed to expedite the trial of the present complaint.

13. Copy of this order be sent to the concerned trial Court for information and compliance.

**SUDHIR KUMAR JAIN
(JUDGE)**

NOVEMBER 14, 2022
N/KG

