



2025:DHC:4898



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

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Reserved on: 25th April, 2025**Pronounced on: 05th June, 2025**

+ CRL.M.C. 1326/2025 & CRL.M.A. 5870/2025

M/S BEST BUILDWELL PVT. LTD. & ORS.Petitioners

Through: Mr. Bhuvan Mishra, Mr. Yash
Maheshwari, Mr. Tanmay
Mishra and Mr. Krishna
Kanhaiya Kumar, Advs.

versus

M/S R.D. SALES

.....Respondent

Through: Mr. Uday Seth and Ms. Puja
Dewan, Advs.
SI Monu Chauhan (I.O), PS.
Crime Branch.

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik SurakshaSanhita, 2023, seeking quashing of the summons dated 18.09.2024 and the consequential proceedings arising



out of CC No. 4878/2024 titled "R.D. Sales v. M/s. Best Buildwell Pvt. Ltd. & Ors."

2. Briefly stated, the facts as per the petition are that the petitioners and the respondent have had longstanding business dealings, and in relation to their most recent transaction in November–December 2023, the petitioners issued two cheques dated 10.11.2023 and 11.12.2023 for Rs. 2,40,000/- each towards the payment of TMT bars, with the mutual understanding that the cheques would not be presented without prior intimation and consent. On 22.01.2024, the petitioners' bank account was provisionally attached by the CGST Department under Section 83 of the CGST Act, 2017, thereby prohibiting any debit transactions.

3. It has been submitted that petitioners duly informed the respondent of this attachment in January 2024 and requested that the cheques be not presented until the account was de-frozen. Notwithstanding this, the respondent presented the cheques on 08.02.2024, which were returned unpaid on 20.02.2024 due to the attachment, although the bank memo erroneously recorded the reason as 'insufficient funds'. A legal notice dated 16.03.2024 was received by the petitioners on 18.03.2024, to which they replied on 27.03.2024, enclosing relevant documents and raising legal objections. Nevertheless, the respondent proceeded to file Complaint Case No. 4878/2024 under Section 138 of the Negotiable Instruments Act, 1881 on 18.04.2024, pursuant to which the Ld. Trial Court passed the impugned summoning order dated 18.09.2024.



4. Learned counsel for the petitioner submitted that the foundational requirement under Section 138 of the Negotiable Instruments Act, 1881, is that the cheque must be drawn on an account "maintained" by the drawer with a banker. It was argued that for an account to be considered as maintained, the drawer must be in a position to operate it—either by depositing or withdrawing funds, or by issuing instructions to the bank. In the present case, the petitioners' bank account had been attached by the GST Department prior to the presentation of the cheques, rendering them incapable of operating the account. Therefore, it was contended that the offence under Section 138 NI Act is not attracted and the summoning order dated 18.09.2024 is legally unsustainable. Reliance was placed on the judgment of this Court in *Deepinder Singh Bedi v. State and Anr.*, Crl. M.C. 5965/2019, decided on 30.09.2024, where it was held that an account frozen by statutory authorities cannot be considered as "maintained" for the purpose of Section 138.

5. It was further submitted that the Ld. Trial Court failed to consider the material placed on record, including the petitioners' reply to the legal notice and the GST communications. In *Deepinder Singh Bedi* (supra), relying on *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*, (2000) 2 SCC 745, the Court held that dishonour of a cheque due to freezing of an account by a statutory authority cannot lead to penal consequences under Section 138 NI Act. It was emphasized that the attachment was not a voluntary act and the inability to honour the cheque was not due to insufficiency of funds or willful default. Once the account stood frozen, the petitioners had no control or ability to give effective instructions to the



bank, and the cheque could not be said to be drawn on a "maintained" account. Hence, the summoning order passed without appreciation of these facts and settled legal principles is liable to be set aside.

6. The court's attention has been drawn to the fact that on the date of presentation of the cheque, i.e., 08.02.2024, the account was already under attachment by the GST Department vide communication dated 22.01.2024. The petitioner relied on *Sachin Jain v. Rajesh Jain* CRL.L.P 91/2022 where this Court held that dishonour of cheques due to freezing of accounts beyond the drawer's control does not satisfy the core ingredients of Section 138. Further reliance was placed on *Ceasefire Industries Ltd. v. State & Ors.*, 2017 SCC OnLine Del 951, where it was held that an accused cannot be faulted if the dishonour is caused due to the account being blocked for reasons beyond their control.

7. Learned counsel for the respondent has vehemently opposed the petition and submitted that the petitioners were fully aware of the attachment of their bank account by the CGST Department through communication dated 22.01.2024. The petitioners themselves placed on record a certificate from the bank confirming the attachment. Despite such knowledge, the petitioners issued the cheques which were presented on 08.02.2024 and dishonoured thereafter. It was argued that this conduct amounts to negligence and misuse of the cheque mechanism. Such conduct cannot be used as a defence to avoid liability under Section 138 of the NI Act.



8. Counsel for the respondent further relied on *Deepinder Singh Bedi v. State* (supra) to argue that mere attachment of a bank account cannot by itself absolve the drawer from liability, particularly when the drawer had prior knowledge of the account being inoperable. It was submitted that knowingly issuing cheques from an already attached account reflects culpable conduct and undermines the sanctity of the cheque system. The respondent emphasized that permitting such defences would defeat the legislative intent behind Section 138, which seeks to ensure financial discipline and deter willful defaults. It was contended that all the ingredients of Section 138 NI Act, i.e., drawing of the cheque, presentation, dishonour, and issuance of notice—stand fulfilled in the present case.

9. The petitioners state that they informed the respondent about the attachment of their bank account by the CGST Department under Section 83 of the CGST Act, 2017, as soon as it occurred. They contend that the cheques were issued with a mutual understanding that they would not be presented without prior intimation and consent. Despite this, the respondent presented the cheques for encashment, leading to their dishonour.

10. Section 138 of the Negotiable Instruments Act, 1881, makes it clear that a cheque's dishonour does not automatically lead to prosecution under the Act. For prosecution to be initiated, the dishonoured cheque must have been returned unpaid either due to insufficient funds in the account or because the cheque exceeds the amount arranged to be paid from the account by an agreement between the account holder and the bank. In this context, the dishonour must result from the account holder's failure to maintain the necessary balance or limit. This principle has been upheld in



the case of *Standard Chartered Bank v. State*, 2007 SCC OnLine Del 1105.

11. Perusal of the record indicates that on 18.01.2024, the Commissioner of the CGST Delhi South Commissionerate issued a communication to the State Bank of India, provisionally attaching the petitioner's bank account under Section 83 of the CGST Act, 2017, and prohibiting any debits without prior departmental approval (**Annexure P3**). This order effectively froze the account and restricted all transactions. The same was confirmed by the bank's letter dated 03.03.2025, stating that a "STOP" had been marked on Account No. 41070762619 on 02.02.2024 pursuant to the CGST attachment order dated 22.01.2024, and that no transactions could be permitted until further instructions were received from the department.

12. Perusal of the reply sent by the petitioner to the legal notice sent by the respondent indicates further that in January 2024, the respondents approached the petitioners seeking prior consent as per their mutual understanding regarding the presentation of the cheques. At that time, the petitioners informed the respondents about the provisional attachment order issued by the CGST Department. They clearly communicated that the bank account had been frozen and no debits could be made without departmental approval.

13. The Court finds that when the petitioners gave the cheques to the respondent, they were not aware that their bank account would be frozen. As soon as they got the information about the account being attached by the



CGST Department, they informed the respondent to avoid any trouble for either side.

14. Under Section 138 of the NI Act, an offence is committed when a cheque is drawn from an account maintained by the drawer and it is returned unpaid due to insufficient funds. Even though the cheque return memo may mention its reason for dishonor as “insufficient funds”, the fact remains that, the petitioners' account was frozen by the CGST Department, and thus, it could not be said to be "maintained" by them at the relevant time. Since the petitioners were unable to operate the account or issue valid instructions to the bank due to the attachment, the essential ingredients of Section 138 are not fulfilled. Even if the funds in the account were insufficient at the time of presentation of the cheques, the account having been frozen by the CGST, it would not have been possible for the petitioner to maintain sufficiency of funds in his account for the cheques to be honoured. This position finds support in **Vijay Chaudhary v. Gyan Chand Jain**, 2008 SCC OnLine Del 554, where it was *inter alia* held as under;

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23. ... *For an account to be maintained by an account holder, it is essential that he is in a position to operate the said account by either depositing monies therein or by withdrawing money therefrom. He should be in a position to give effective instructions to his banker with whom the account is maintained. However, in the present case, once the account has been attached by an order of the Court, the said account could not be operated by the petitioner. He could not have issued any binding instructions to his banker, and the banker was not obliged to honour any of his instructions in relation to the said account, so long as the attachment under the court orders continued.*”



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15. In view of the above facts and circumstances, the petition is allowed and the summoning order dated 18.09.2024 arising out of the CC no. 4878/2024 titled as “*R.D. Sales v. M/S Best Buildwell Pvt. Ltd. And ors*” is quashed.

RAVINDER DUDEJA, J.

JUNE 05, 2025

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