



2025:DHC:6348



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.08.2025*+ **CRL.M.C. 1474/2022 & CRL.M.A. 6375/2022**

GURVINDER SINGH TOORPetitioner

Through: Mr. Sagar Pathak, Advocate.

versus

ROHIT MALHOTRARespondent

Through: Mr. Arjun Dewan and Mr.
Akash Arora, Advocates.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner has approached this Court by way of this petition, seeking quashing of the Complaint Case No. 2435/2020, titled "Rohit Malhotra v. Gurvinder Singh Toor" under Section 138 of the Negotiable Instruments Act, 1881 [hereafter 'NI Act'] pending before the learned Metropolitan Magistrate, West District, Tis Hazari Court, Delhi [hereafter 'Magistrate'].

FACTUAL BACKGROUND

2. Brief facts of the case, as set out in the petition and evident from the complaint filed in this case, are that the petitioner is the Principal Director of a company incorporated under the name *Zoi*



International Company Ltd. [hereafter '*the Company*'], which is engaged in the business of textiles and used garments. The respondent herein was also one of the Principal Directors of the Company, holding 45% equity shareholding. He resigned from the directorship of the Company on 06.07.2020. The respondent had initially met the petitioner along with one Mr. Manish Alag in November 2018 to discuss a business project aimed at establishing a branch of the Company in Thailand. Pursuant to these discussions, the respondent decided to collaborate in the business and purchased 45% of the Company's shareholding. However, owing to certain disputes among the directors, the respondent, in February 2020, decided to sell his 45% equity stake in the Company. It was agreed that the petitioner would purchase the respondent's shares for a total consideration of ₹1,90,00,000/-. Since the petitioner needed time to arrange the funds, the parties agreed that a formal Share Purchase Agreement would be executed at a later date.

3. At the respondent's insistence, a Memorandum of Understanding (MoU) was executed on 14.02.2020, wherein it was recorded that the respondent would resign from his position as Principal Director, and that a proper Share Purchase Agreement would be executed thereafter, followed by the payment of the agreed consideration. On the same date, i.e., 14.02.2020, the petitioner issued two post-dated cheques – cheque no. 385471 dated 30.03.2020 for ₹1,13,50,000/- and cheque no. 385472 dated 26.03.2020 for



₹76,50,000/-, both drawn on Axis Bank Ltd., Gandhidham, Gujarat [hereafter '*the said cheques*'] – towards the total consideration amount, in anticipation of the execution of the Share Purchase Agreement.

4. However, *vide* an e-mail dated 18.03.2020, the petitioner informed the respondent of his inability to proceed with the share purchase as contemplated under the MoU dated 14.02.2020, citing personal reasons and financial difficulties. Consequently, he terminated the MoU. In response, the respondent, through an e-mail dated 23.03.2020, alleged that the termination was illegal, asserting that the MoU did not contain a termination clause and that the petitioner could not unilaterally cancel the agreement. Subsequently, on 25.03.2020, the petitioner replied to the said e-mail, denying the allegations and requesting the respondent not to present the said cheques for encashment, stating that stop payment instructions had already been issued in this regard.

5. However, the respondent presented both post-dated cheques (bearing nos. 385471 and 385472) for encashment, which were returned unpaid *vide* separate Return Memos dated 02.06.2020, by the bank for the reason 'Payment Stopped by Drawer'. The respondent thereafter sent a legal notice dated 15.06.2020 in terms of Section 138(b) of NI Act; however, no reply was received by the respondent. Thereafter, the present complaint under Section 200 of the Cr.P.C., for offence under Section 138 of NI Act was filed by the



respondent.

6. The petitioner/accused was summoned by the learned Magistrate *vide* order dated 11.01.2021. Vide order dated 28.01.2022, the learned Magistrate framed notice under Section 251 of Cr.P.C. against the present petitioner.

THE RIVAL CONTENTIONS

7. It is argued by the learned counsel appearing for the petitioner that the respondent had ceased to be the holder in due course of the said cheques upon receipt of the petitioner's e-mail dated 18.03.2020, wherein the petitioner had communicated his decision to terminate the MoU. It is submitted that the respondent was fully aware, by then, that stop payment instructions had already been issued by the petitioner to his bank, and therefore, no legally enforceable liability subsisted at the time of presentation of the cheques. It is further contended that the cheques in question were not issued against an existing liability but were based on a future obligation, contingent upon the execution of a Share Purchase Agreement. The learned counsel argues that the post-dated cheques were intended to be honoured only upon the occurrence of the said future event, i.e., the formal execution of the Share Purchase Agreement. Since no such agreement was ever executed, the liability did not crystallize and the respondent could not claim that the cheques were issued in discharge of a legally enforceable debt.



8. It is also submitted that the MoU itself was terminated by the petitioner on 18.03.2020, prior to the presentation of the said cheques, and as such, the respondent was no longer entitled to present the cheques or initiate proceedings under Section 138 of the NI Act. The learned counsel for the petitioner further argues that the learned Magistrate failed to appreciate this aspect of the matter at the stage of summoning, particularly that no legal debt or liability existed at the time when the cheques were issued. Attention is drawn to the specific clauses of the MoU dated 14.02.2020, which clearly contemplate the execution of a formal Share Purchase Agreement before any transfer of shares or payment would be effected. The relevant clauses are reproduced below:

“3) Mr. Rohit Malhotra undertakes to transfer the above shareholding unconditionally to Mr. Gurvinder Singh Toor immediately on realization of above referred cheques and agrees to perform such acts as may be necessary for legal transfer of title of such shares as per regulations prevalent in country of Thailand including signatures on the Share Purchase Agreement.

4) Post Signing of the Share Purchase Agreement and the Consideration of the Equity Stake sale being realised by Mr. Rohit Malhotra, he agrees to resign as a Director in the said company. Further, he agrees to hand -16- over any documents, agreements, papers related to the company which he may be holding to Mr. Gurvinder Singh Toor.

6) Both the above parties will enter into a detailed share purchase agreement to execute the transfer of the shares as per the terms of this MoU and the Rules and Regulations as mandated.”

9. It is contended that there are no specific allegations in the



complaint against the petitioner which would make out a case under Section 138 of the NI Act. A bare reading of the above clauses, it is argued, makes it evident that the MoU was dependent on the fulfilment of certain future conditions and that the cheques were not issued in respect of a present, subsisting liability but rather in anticipation of a future contractual arrangement that never materialized.

10. ***Conversely***, the learned counsel for the respondent has argued that the cheques in question were issued by the petitioner towards repayment of a substantial investment made by the respondent in the Company. It is contended that the petitioner had agreed to purchase the respondent's 45% equity shareholding for a total sum of ₹1,90,00,000/- in terms of the MoU dated 14.02.2020, and the cheques were issued pursuant to this binding arrangement. It is argued that a legal liability existed at the time of issuance and presentation of the cheques, as the MoU clearly envisaged payment prior to the execution of the Share Purchase Agreement, and not the other way around. It is further submitted that the MoU did not contain any termination clause and that the obligation to transfer shares was to arise only after the payment was received. Thus, the cheques were not issued towards a future or contingent liability but were part of a concluded agreement. The learned counsel draws attention to the distinction between a Memorandum of Understanding and a Share Purchase Agreement, arguing that the MoU itself was a



complete agreement as to consideration and payment terms. In support of his argument, he relies on the judgment of the Hon'ble Supreme Court in ***Ripudaman Singh v. Balkrishan*: (2019) 4 SCC 767**, to contend that consideration arising under such agreements is a legally enforceable debt within the meaning of Section 138 of the NI Act.

11. It is also argued that the MoU could not have been unilaterally terminated by the petitioner merely on the ground of financial constraints. The counsel submits that the respondent did not commit any breach, and the petitioner's e-mail dated 18.03.2020 cannot amount to legal termination of the agreement. The respondent's reply dated 23.03.2020 disputed this attempted termination. Therefore, the liability of the petitioner under the cheques remained alive and subsisting when they were presented for encashment. The learned counsel also contends that the presumption under Section 139 of the NI Act operates in favour of the respondent and has not been rebutted by the petitioner. It is submitted that the defence now taken by the petitioner, that the cheques were issued merely as security, can only be adjudicated upon after trial. It is argued that disputed questions of fact such as existence of legal liability cannot be examined in proceedings under Section 482 Cr.P.C., and for this, reliance is placed on ***HMT Watches Ltd. v. M.A. Abida & Anr*: (2015) 11 SCC 776**.

12. It is further pointed out that the learned Magistrate had



conducted an inquiry under Sections 200 and 202 of Cr.P.C. before issuing summons to the petitioner. Additionally, it is submitted that the respondent has also filed CS (COMM) No. 531/2020 before this Court seeking specific performance of the MoU dated 14.02.2020. In the said suit, when no written statement was filed by the petitioner, the respondent moved I.A. No. 15134/2022 seeking a summary judgment under Order XIII-A CPC. This Court, *vide* judgment dated 28.06.2024, held the MoU to be a binding and enforceable contract and directed the petitioner to pay ₹1,90,00,000/- to the respondent, upon which the Share Purchase Agreement would be executed. It is argued that although the civil court's findings are not binding on the criminal court, they carry persuasive value in assessing the nature of the liability.

13. Lastly, it is contended that the petitioner did not challenge the summoning order before the Sessions Court and thus failed to exhaust the remedies available to him before invoking the jurisdiction of this Court. In view of the above, the learned counsel submits that there existed a legally enforceable debt on the date of issuance of the cheques and that the MoU was not merely an agreement for future consideration but a binding contract requiring immediate payment. It is thus prayed that the present petition be dismissed.

14. This Court has **heard** arguments addressed by the learned counsel appearing for either side, and has perused the material available on record.



ANALYSIS & FINDINGS

15. The issue before this Court is whether the Complaint case in question can be quashed – on the ground that cheques issued by the petitioner in favour of the respondent, pursuant to the MoU dated 14.02.2020, which got dishonored, were not issued in discharge of a legally enforceable debt or liability within the meaning of Section 138 of the NI Act.

16. The Hon'ble Apex Court in case of ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel***: (2023) 1 SCC 578, has held that to constitute an offence under Section 138 of NI Act, following ingredients are required to be fulfilled:

“11. Section 138 of the Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

- (i) A cheque drawn for the payment of any amount of money to another person;
- (ii) The cheque is drawn for the discharge of the 'whole or part' of any debt or other liability. 'Debt or other liability' means legally enforceable debt or other liability; and
- (iii) The cheque is returned by the bank unpaid because of insufficient funds.

However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:

- (i) The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;
- (ii) The holder of the cheque must make 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 from the



receipt of the notice from the bank that the cheque was returned dishonoured; and

(iii) The holder of the cheque fails to make the payment of the said amount of money within fifteen days from the receipt of the notice...”

17. The case of the petitioner, as argued before this Court, is premised on the absence of one of the aforesaid ingredients in this case, i.e. there being no ‘legally enforceable debt or other liability’.

18. In light of what has been contended on behalf of the petitioner, the liability of the petitioner, as alleged by the respondent, is to be assessed in the context of the validity and enforceability of the MoU dated 14.02.2020. However, it is to be noted in this regard that in ***Rohit Malhotra v. Gurvinder Singh Toor: CS (COMM) No. 531/2020***, a Coordinate Bench of this Court examined the very same MoU and upheld its validity. The Court found that the MoU was executed for facilitating the respondent’s exit from the Company, in return for transfer of his 45% equity shareholding to the petitioner for a consideration of ₹1.9 crore, against which two post-dated cheques were admittedly issued by the petitioner in favour of the respondent. The Coordinate Bench held that the MoU dated 14.02.2020 constituted a concluded and binding contract. The petitioner had already acted upon it by issuing the cheques and could not subsequently retract his obligations by issuing stop payment instructions. The Court categorically observed that the petitioner was not entitled to unilaterally dishonour his commitments under the



MoU by purporting to terminate it without the respondent's consent. In the absence of mutual agreement between the parties, such termination was held to be invalid. The Coordinate Bench also held that a concluded contract cannot be rescinded or varied unilaterally, except by mutual consent or if it is shown to be incomplete or inconclusive. The Coordinate Bench further noted that since the respondent had not committed any breach of the MoU, the petitioner could not invoke financial constraints as a ground to walk away from his contractual obligations. The Bench also observed that clause 6 of the MoU clearly contemplated the execution of a Share Purchase Agreement (SPA) as a necessary step to effectuate the transfer of shares, and therefore, in exercise of its equitable jurisdiction, the Court could direct specific performance of the SPA based on the terms of the MoU.

19. In the present matter, since it has already been held by the Coordinate Bench that the unilateral termination of the MoU by the petitioner was not legally valid, this Court finds no reason to take a different view. As a result, at this stage and for the purpose of present petition, it can be held that *prima facie*, there was no suspension or extinguishment of the petitioner's obligations arising under the MoU. The liability under the said MoU, including the issuance of cheques towards the consideration amount, remained alive and subsisting on the date of presentation of the cheques by the respondent.

20. In the present case, it is further material to note that the



petitioner, at the time of framing of notice, has accepted that both the cheques in question were signed by him, the other material particulars had also been filled by him, and that he had also received the statutory legal notice sent to him by the respondent/complainant. Therefore, clearly, the presumption under Section 139 of the NI Act would be attracted in this case.

21. The Hon'ble Supreme Court in case of ***Oriental Bank of Commerce v. Prabodh Kumar Tewari***: 2022 SCC OnLine SC 1089 has held that a drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The relevant portion is reproduced as under:

“16. A drawer who signs a cheque and hands it over to the payee, is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in discharge of a liability. The presumption arises under Section 139.”

22. Since there is a legal presumption that a cheque having been issued would be in discharge of liability, it is important that such presumption must receive due weightage while considering the present petition. Moreover, the Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)***: 2022 SCC OnLine SC 513, has observed that the burden of proving that there is no existing legally enforceable debt or liability, is to be discharged during the



course of trial, and the same cannot be a ground for quashing of a complaint or summoning order under Section 138 of NI Act. It was concluded by the Supreme Court as under:

“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un- merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited...”

23. The Hon’ble Supreme Court in ***M.M.T.C Ltd. & Anr v. Medchl Chemicals & Pharma (P) Ltd. & Anr***: (2002) 1 SCC 234, also held that burden shifts on the accused of proving that there exists



no debt or liability, which has to be discharged during the trial.

24. This Bench in ***Akbar Ali v. State of NCT of Delhi & Anr:*** 2023 SCC OnLine Del 7702 had also observed as under:

“10. Thus, in view of the law laid down by Hon’ble Apex Court, it is undisputed that whether the debt was legally recoverable or not is to be decided during the course of trial and not at pre-trial stage. At the stage of filing of complaint and issuing of summons, only a prima facie view has to be taken by the Courts when considering quashing of such a complaint, which can be done only in case when the petitioner is able to prove, by bringing on record material of sterling quality, that the essential ingredients of offence under Section 138 of NI Act are not made out from the bare reading of the complaint.”

25. Therefore, in view of the foregoing discussion, this Court is of the view that there exists no grounds to quash the complaint case filed in respect of Section 138 of NI Act. In view of the fact that issuance of cheque, signatures on the said cheques and filling of material particulars on the cheque is admitted by the petitioner, this Court is of the view that the contentions raised before this Court are a matter of trial, and cannot be considered at this stage for quashing of proceedings.

26. The present petition, alongwith pending application, is accordingly dismissed.

27. It is however clarified that observations made in the judgment are solely for the purpose of deciding present petition and shall not affect the merits of the case during the trial.



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28. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

AUGUST 1, 2025/vc