



\$~69

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

+ **CRL.M.C. 2374/2023**

DIXIT BAJAJ

..... Petitioner

Through: Mr. Mahir Malhotra, Mr. Satish Kumar, Ms. Jeevika Dhyani and Ms. Smriti Papreja, Advocates.

versus

STATE OF GNCT OF DELHI & ANR.

..... Respondents

Through: Mr. Satinder Singh Bawa, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

%

10.04.2023

CRL.M.A. 8964/2023

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 2374/2023

By way of the present petition under section 482 of the Code of Criminal Procedure 1973, the petitioner seeks quashing of summoning order dated 04.03.2020 made by the learned Metropolitan Magistrate in complaint case No. 5048/2019 registered under section 138 of the Negotiable Instruments Act 1881 ('N.I Act').

2. Mr. Mahir Malhotra, learned counsel for the petitioner submits that the petitioner's wife had entered into an Agreement to Sell and Purchase/*Bayana* dated 22.08.2019 with respondent No.2/complainant in respect of a certain property; and the subject cheque was issued towards "*advance bayana amounts*" for the



purchase of the said property, being 10% of the total sale consideration. Counsel submits however, that the petitioner's wife subsequently discovered that despite the narration to the contrary in clause 6 of the agreement to sell, the property was not free from encumbrance.

3. It was in these circumstances that instructions were issued to stop payment of the subject cheque. Counsel submits, that in the aforesaid circumstances there was no 'legally enforceable debt' and summons could not have been issued. That apart, counsel also submits, that the petitioner (husband of the intending purchaser) was, in any case, not a signatory to the agreement to sell.
4. In support of the above, the petitioner relies upon the decision of the Supreme Court in ***Indus Airways Pvt. Ltd. and Ors. vs. Magnum Aviation Pvt. Ltd. and Ors.***¹ which has also been applied to a similar fact situation by a Co-ordinate Bench of the Punjab & Haryana High Court in ***Daljit Kaur vs Dilbag Singh***².
5. Upon being queried, counsel also confirms that neither the possession nor the title to the subject property has been transferred in favour of the petitioner or his wife.
6. Counsel explains that the delay in filing the present petition was by reason of the intervening pandemic, since summons in the matter were received by the petitioner only in November 2021; whereupon, for certain other reasons which are part of the record before the

¹ (2014) 12 SCC 539

² CRM. M No. 47813/2017 (O&M) dated 12.09.2022.



learned Magistrate, NBWs were also issued against the petitioner, which were subsequently cancelled.

7. Upon a *prima-facie* view of the matter, issue notice.
8. Mr. Satinder Singh Bawa, learned APP appears for the State accepts notice; and submits that the State has no role in the matter since it arises from a private complainant.
9. Upon the petitioner taking requisite steps, let notice be sent to respondent No. 2 by all permissible modes, returnable for the next date.
10. Let the notice indicate that reply to the petition be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
11. Let a copy of the reply sent by the petitioner to the statutory notice received from respondent No. 2, be placed on record.
12. Re-notify on 28th August 2023

CRL.M.A. 8963/2023 (for stay)

13. By way of the present application under section 482 of the Code of Criminal Procedure 1973, the petitioner seeks stay of further proceedings before the learned Magistrate which are stated to be at the stage of section 145(2) of the NI Act.
14. In view of the above position, further proceedings before the learned Magistrate shall remain stayed, till the next date of hearing before this court.
15. Re-notify on 28th August 2023.

ANUP JAIRAM BHAMBHANI, J

APRIL 10, 2023/ak