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

+ **CRL.M.C. 2458/2023**

AASTHA BAJAJ

..... Petitioner

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

versus

STATE GNCT OF DELHI & ANR.

..... Respondents

Through: Mr. Tarang Srivastava, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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02.05.2023

CRL.M.A. No.9378/2023 (Exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 2458/2023

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. 5047/2019 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 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 subsequently discovered that despite the narration to the contrary in clause 6 of the agreement to sell, the property was not free from encumbrance. Mr. Malhotra has shown to the court a copy of notice dated 25.10.2019 issued by the concerned authorities, to submit that the subject property stood on land which belonged to the Gram Sabha, which land had been encroached upon. Let a copy of the notice be placed on record.
3. It is submitted that 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.
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.

¹ (2014) 12 SCC 539

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



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.
6. Furthermore, counsel submits that in a connected matter bearing CRL.M.C. 2374/2023 filed by the petitioner's husband, in respect of a cheque issued by the husband in the same transaction, *vide* order dated 10.04.2023, this court has issued notice and has also stayed further proceedings before the learned Magistrate.
7. 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 learned Magistrate, NBWs were also issued against the petitioner, which were subsequently cancelled.
8. Upon a *prima-facie* view of the matter, issue notice.
9. Mr. Tarang Srivastava, 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.
10. Upon the petitioner taking requisite steps, let notice be sent to respondent No. 2 by all permissible modes, returnable for the next date.
11. 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.
12. Let a copy of the reply sent by the petitioner to the statutory notice received from respondent No. 2, be placed on record.



13. Re-notify alongwith CRL.M.C. 2374/2023 on 28th August 2023.

CRL.M.A. 9377/2023 (for stay)

14. 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.

15. In view of the above position, further proceedings before the learned Magistrate shall remain stayed, till the next date of hearing before this court.

16. Re-notify alongwith CRL.M.C. 2374/2023 on 28th August 2023.

ANUP JAIRAM BHAMBHANI, J

MAY 2, 2023/ak