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

***Reserved on: 29.04.2024***
***Pronounced on: 02.07.2024***

\+ **CRL.M.C. 1675/2022 & CRL.M.A. 7184/2022**
\+ **CRL.M.C. 1688/2022 & CRL.M.A. 7215/2022**
\+ **CRL.M.C. 1693/2022 & CRL.M.A. 7240/2022**
\+ **CRL.M.C. 1694/2022 & CRL.M.A. 7242/2022**
\+ **CRL.M.C. 1067/2023 & CRL.M.A. 4100/2023**
\+ **CRL.M.C. 1066/2023 & CRL.M.A. 4098/2023**

SANYAM BHUSHAN ..... Petitioner
SANYAM BHUSHAN AND ANR. ..... Petitioners
SACHIN GOGIA ..... Petitioner
AKASH MISHRA ..... Petitioner

Through: Mr.Hrishikesh Baruah, Mr.Kumar Kshitij and Mr.Anurag Mishra, Advs. in CRL.M.C. 1675/2022, CRL.M.C. 1688/2022 & CRL.M.C. 1693/2022
Mr.Madhav Khurana and Ms.Riya Arora, Advs. in CRL.M.C. 1067/2023 & CRL.M.C. 1066/2023

versus

STATE NCT OF DELHI & ANR. ..... Respondents
SHIVAM BHAGAT ..... Respondent

Through: Ms.Priyanka Dalal, APP.
Mr.Arshdeep Singh Khurana, Ms.Neeha Nagpal, Mr.Malak Bhatt, Mr.Vishwendra Tomar, Ms.Supriya Julka, Advs. for R-2 in CRL.M.C.Nos.1675/2022, 1688/2022, 1693/2022, 1694/2022.

Mr.Aadil Boparai, Ms.Neeha Nagpal, Mr.Malak Bhatt, Mr.Vishwendra Tomar, Ms.Supriya Julka & Ms.Shristi, Advs. for R-2 in CRL.M.C. 1067/2023 & 1066/2023.

**CORAM:**
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**J U D G M E N T**

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the Complaints filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), being CC No. 8494/2016 (in CRL.M.C. 1675/2022), CC No. 8493/2016 (in CRL.M.C. 1688/2022 and CRL.M.C. 1066/2023), CC No. 243/2018 (in CRL.M.C. 1693/2022), CC No. 4487/2016 (in CRL.M.C. 1694/2022), and CC No. 8495/2016 (in CRL.M.C. 1067/2023) (hereinafter collectively referred to as the 'Complaint Cases'), as well as the summoning orders dated 27.07.2013, 26.09.2014, and 22.02.2015 passed in the said Complaint cases, along with all subsequent proceedings emanating therefrom.

2. Since the Complaint Cases have been founded on the same transaction, though in respect of different cheques, and pertain to the same set of facts and circumstances, and mainly common contentions have been raised to seek quashing thereof, therefore, these petitions are being disposed of by way of this common judgment.

***Factual Matrix:***

3. The above complaints have been filed by the Complainant, that is, Mr.Shivam Bhagat, alleging that the petitioners/accused are the Directors, Promoters, and Authorized Representatives of Swift Boutique Hotel Pvt. Ltd. (hereinafter referred to as the 'SBHPL') and Swift Global Pvt. Ltd. (hereinafter referred to as the 'SGPL'), which are engaged in the business of hotels, catering, and other allied fields. SBHPL and SGPL collectively shall be referred to hereinbelow as the "Companies".

4. It is stated that the petitioners jointly represented themselves to be the Directors, Promoters, and Authorized Representatives of the Companies and as being responsible for the management, functioning, working, and day-to-day affairs of the said Companies. The Complaint states that it is on these assurances that the Complainant decided to invest a huge amount in the said Companies in consideration of allotment of 25% shares of the paid-up capital of SBHPL as well as being appointed as a Director of the said Company by investing Rs. 1.25 Crores.

5. The Complainant states that he invested other amounts of Rs.60,45,000/- towards interest paid to the Bank and Rs. 89,67,939/- towards the renovation of the properties, etc., from time to time. It is stated that these amounts were paid on the specific condition of the Complainant being made shareholder and director within a certain period and other beneficial promises.

6. It is stated that thereafter, the Complainant entered into a Share

Subscription and Shareholders Agreement dated 08.07.2010 (hereinafter referred to as 'SSSA') with the petitioners in their personal capacity as also on behalf of the said Companies. It is stated that the petitioners also reassured the Complainant of the due performance of the said Agreement and such assurances were also made by a letter dated 15.07.2010 and cheques issued. It is alleged that various warranties and assurances were given regarding management, shareholding, disposal of shares, board meetings, etc., in terms of the said agreement and letter. The Complainant was also given an option to withdraw from the said arrangement within 27 months.

7. It is alleged that in the said agreement, it was agreed that the petitioners would buy-back the shares allotted to the complainant for a fixed buy-back amount of Rs.2.5 Crores along with the amount spent towards the renovation cost and payment of Bank interest, and interest on the above amounts at the rate of 12.5% per annum compounded annually, for which various cheques had been issued by the petitioners.

8. It is alleged that the petitioners further promised to pay an extra amount over and above the aforesaid amount, being the 10% increase in the property of hotels at Goa, which was to be valued at the time of the final settlement/buy-back of shares from the Complainant.

9. It is alleged that the petitioners also promised to pay the complainant 18% interest on the invested amount if warranties were proved false.

10. It is alleged that in consideration of the abovementioned amount

invested by the Complainant in the company of the petitioners and the money paid towards the payment of loans and renovations and interest thereon, the petitioners issued various undated cheques from their personal account(s) in addition to a cheque from the account of the said company duly and jointly signed by the petitioners, with a right to the Complainant to insert dates on the said cheques. It is stated that as per the SSSA, the petitioners also promised to pay the Complainant interest on all the aforesaid amounts and also assured that the cheques for the final interest amount would be issued at the time of said payment.

11. It is asserted in the Complaints that the promises and assurances of the directorship and registration of the shares in the name of the Complainant and all the warranties proved wrong and the petitioners failed to comply with the terms and conditions of the SSSA and the letter issued subsequently on 15.07.2010. It is stated that the Complainant sent a notice to the petitioners on 04.10.2012, informing them of his withdrawal from the arrangement and asking for his payments and interest in accordance with the SSSA and the subsequent letter dated 15.07.2010, however, no response was received by the Complainant from the Petitioners.

12. The Complainant deposited the cheques issued by the Petitioners from their personal accounts, all of which were returned as dishonoured with either the remark '*Account Closed*', '*Funds Insufficient*', or '*The Drawers Signature Differs*'. It is stated that these cheques were part payments towards the confirmed debt as per the SSSA. It is stated that even the cheque bearing no. 000028 for Rs.2.50

crores on behalf of Swift Global Pvt. Ltd. was also returned unpaid on 21.05.2013 with the remark "*Funds Insufficient"*, for which a separate notice was issued by the Complainant.

13. The Complainant issued respective legal notices dated 13.06.2013 to the Petitioners for the abovementioned dishonour of the cheques issued by them.

14. However, as payments were not made by the petitioners, the Complainant filed the Complaint Cases, that are, CC Nos. 5684/2013, 5683/2013 and 5682/2013, under Section 138 read with Section 142 of the NI Act before the Court of the learned Metropolitan Magistrate, South-East District, Saket Courts, New Delhi, on 25.07.2013. The learned Metropolitan Magistrate took cognizance of the Complaint Cases, and *vide* order dated 27.07.2013 summons were issued to the Petitioners.

15. As far as Crl.M.Cs. 1694/2022 and 1067/2023 are concerned, the Complainant filed the Complaint cases, that are, CC Nos. 3195/2014, and 3197/2014, respectively, before the Court of the learned Metropolitan Magistrate, South-East District, Saket Courts, New Delhi.

16. However, in view of the directions passed by the Supreme Court in ***Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.,*** (2014) 9 SCC 129, the learned Metropolitan Magistrate, Saket Courts, New Delhi, *vide* order dated 13.08.2014, returned the complaints to the Complainant as the cheques in question were drawn on banks outside the territorial jurisdiction of the said Court.

17. As far as the complaints in Crl.M.Cs. 1675/2022, 1688/2022,

1693/2022, 1067/2023, and 1066/2023 are concerned, the same on their transfer were listed before the Court of the learned Judicial Magistrate First Class, Gurugram, Haryana, (hereinafter referred to as the 'JMFC') and the said Court, *vide* its order dated 26.09.2014, was pleased to issue summons to the petitioners on the said Complaints.

18. Later, in view of the Negotiable Instruments (Amendment) Ordinance, 2015, which came into effect on 15.06.2015, the learned JMFC transferred the Complaints to the Court having competent jurisdiction at the Rohini Courts, Delhi.

19. As far as Crl.M.C. 1694/2022 is concerned, on transfer, the Complaint was listed before the Court of the learned Metropolitan Magistrate-03, North District Rohini Court, which Court, *vide* its order dated 22.01.2015, was pleased to issue summons to the accused/petitioner-Sachin Gogia.

20. The Complaint Cases are now pending adjudication before the Court of the learned Metropolitan Magistrate-03, North District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court').

21. In the complaints, the learned Trial Court framed Notice under Section 251 of the Cr.P.C. against the petitioners *vide* order dated 27.10.2022.

***Submissions of the Learned Counsels for the Petitioners:***

22. Mr.Hrishikesh Baruah, the learned counsel for the petitioners in CRL.M.Cs. 1675/2022, 1688/2022, 1693/2022, and 1694/2022 submits that the complaint cases filed against the petitioners are liable to be dismissed as there is no legal debt or liability owed by the

petitioners to the Complainant. He submits that the entire case of the Complainant is based on the buyback option under the SSSA dated 08.07.2010. He submits that in terms of Clause 4.2 of the SSSA, the option to buy back the shares could be exercised by the Complainant within a maximum period of 27 months. He submits that the said clause further provides that for exercising such option, the Complainant has to give a notice of 6 months to the SGPL in case such option is exercised before the expiry of the 21st month of the SSSA, and after the expiry of 21 months till the end of the 27th month, the notice period was to stand correspondingly reduced. He submits that in terms of Clause 18.2 of the SSSA, a notice is deemed to have been validly given on the expiry of seven days after the date of posting. He submits that the same is the effect of the letter dated 15.07.2010.

23. He submits that in the present case, the alleged notice, though dated 04.10.2012, has been posted on 06.10.2012, it is therefore, deemed to have been given only on 13.10.2012. He submits that in terms of Clause 4.2 read with Clause 18.2 of the SSSA, the last date for posting of such notice was 01.10.2012, which would make it to be given on 08.10.2012, that is, the last date of end of 27th month from the date of the SSSA. He submits that, therefore, the notice for buy back of the shares has not been given by the Complainant in terms of the SSSA within the 27th month and the liability to pay any amount has not accrued against the petitioners and in favour of the Complainant.

24. He submits that even otherwise, the notice dated 04.10.2012 not

being addressed to the SGPL, cannot be considered to be in terms of the SSSA thereby resulting in accrual of a liability against the petitioners and in favour of the Complainant.

25. He further submits that it is not the case of the Complainant that upon exercise of the buy-back option, the Complainant had transferred the shares to the petitioners in terms of the SSSA. In fact, it is the own case of the Complainant that even the transfer of the shares in his own favour has still not been registered with SBHPL, therefore, the Complainant was in no position to honour his commitment of transferring the shares to the petitioners pursuant to the buy-back of shares even if such an offer was accepted by the petitioners. He submits that as the cheques in question were given as consideration/security for the transfer of the shares, the said liability in the absence of such transfer did not accrue. He submits that in the absence of any liability to pay, a complaint under Section 138 of the NI Act was not maintainable. In support, he places reliance on the judgments of the Supreme Court in ***Indus Airways (P) Limited & Ors. v. Magnum Aviation (P) Limited & Anr.*** (2014) 12 SCC 539; and ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel***, (2023) 1 SCC 578; and of this Court in ***Icon Buildcon Pvt. Limited v. Aggarwal Developers Pvt. Limited & Ors.***, 2014 SCC OnLine Del 1563.

26. He further submits that in terms of the SSSA and the letter dated 15.07.2010, two sets of cheques had been issued to the Complainant; one from the account of SGPL, while the others were issued from the personal accounts of the petitioners. He submits that

in terms of the letter dated 15.07.2010, it was the petitioners who were to inform the Complainant as to which set of cheques are to be presented in case of default by the petitioners. He submits that the letter further stated that in case the Complainant is not so informed, the Complainant may present the personal cheques of the petitioners. He submits that, however, in either case, both set of cheques could not have been presented by the Complainant for encashment. He submits that the Complainant, however, proceeded to present both sets of cheques, far exceeding the liability owed by the petitioners and the companies, and has also filed the above set of complaints based on the dishonour of both sets of cheques. He submits that as the cheques were for an amount exceeding the liability owed, the complaints, therefore, are not maintainable.

27. He further submits that petitioner-Mr.Sanyam Bhushan had resigned from the directorship of the SGPL on 12.02.2013 and from the directorship of SBHPL on 16.02.2013, therefore, was not an officer of the said companies as on the date of the dishonour of the cheques. He submits that similarly, Mr. Sachin Gogia had resigned from the SGPL on 15.03.2013. Therefore, in view of the judgment of the Supreme Court in ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr.***, (2005) 8 SCC 89, the complaints were not maintainable against the said petitioners.

28. Countering the submission of the learned counsel for the Complainant that the present set of petitions are liable to be dismissed on ground of inordinate delay as also on availability of an alternate efficacious remedy, the learned counsel for the petitioners submits that

a petition under Section 482 of the Cr.P.C. cannot be dismissed merely on the ground of delay and laches or on the ground of availability of an alternate remedy in form of a Revision under Section 397(2) of the Cr.P.C.. In support of his submission, he places reliance on the judgments of the Supreme Court in ***Keki Hormusji Gharda & Ors. v. Mehervan Rustom Irani & Anr.*** (2009) 6 SCC 475; ***Gunmala Sales (P) Ltd. v. Anu Mehta & Ors.***, (2015) 1 SCC 103; ***Madhu Limaye v. The State of Maharashtra***, (1977) 4 SCC 551; ***Prabhu Chawla v. State of Rajasthan & Anr.***, (2016) 16 SCC 30; and of this Court in ***Arvind Kejriwal & Anr. v. State NCT of Delhi***, 2020 SCC OnLine Del 1362.

29. He further submits that, in any case, there is no delay in filing of the present petitions. He submits that the complaints were filed in 2013, and the learned Metropolitan Magistrate therein was pleased to issue summons on the same to the petitioners *vide* order dated 27.07.2013. However, later, in terms of the judgment of the Supreme Court in ***Dashrath Rupsingh Rathod*** (Supra), the complaints were transferred and were listed before the learned JMFC, who was pleased to issue fresh summons to the petitioners on the same. He submits that thereafter, in view of the amendment to the NI Act, the complaints were again transferred to the learned Trial Court, and fresh notices of appearance were issued to the petitioners. The parties were then referred to Mediation and they tried to explore the possibility of arriving at an amicable settlement, however, the Settlement could not fructify. He submits that thereafter, the Covid-19 pandemic intervened because of which further time was taken to file the present petitions.

He submits that, therefore, there is no delay in filing of the present petitions.

30. Mr.Madhav Khurana, learned counsel appearing for the petitioner-Mr.Akash Mishra, while adopting the arguments of Mr.Hrishikesh Baruah, learned Advocate, submits that Mr.Akash Mishra had resigned as a Director of SGPL and SBHPL on 17.04.2012, that is, even before the presentation of the cheques. He submits that, therefore, before the Offence under Section 138 of the NI Act was allegedly committed, Mr. Akash Mishra was not in control of the said Companies and could not have been made liable for the dishonour of the cheques. He submits that even the cheques that were given from personal accounts were, in fact, for and on behalf of the said Companies and could not have been presented for encashment by the Complainant once the said petitioner had resigned from the post of Director of the Companies. He places reliance on the judgments of this Court in ***Kamal Goyal v. United Phosphorus Ltd.***, 2010 SCC OnLine Del 447; ***J.N. Bhatia & Ors. v. State & Anr.***, 2006 SCC Online Del 1598; and of the Supreme Court in ***Harman Electronics Pvt. Ltd. & Anr. v. National Panasonic India Pvt. Ltd.***, (2009) 1 SCC 720.

31. He further submits that on the same cause of action, the Complainant has also filed a complaint based on which FIR No.224/2013 has been registered, *inter alia*, against the petitioner-Mr.Akash Mishra, at Police Station: New Friends Colony, EOW, Delhi under Sections 406/420/34/120B of the Indian Penal Code, 1860. Placing reliance on the judgment of the Supreme Court in ***J.***

***Vedhasingh v. R.M. Govindan & Ors.***, 2022 SCC OnLine SC 1010, he submits that this would lead to double jeopardy for the petitioners and the continuation of the complaints in question deserve to be stayed.

***Submissions of the Learned Counsel for the Complainant:***

32. On the other hand, Mr.Arshdeep Singh Khurana, learned counsel appearing for the Complainant, contends that the present set of petitions are liable to be dismissed on the ground of delay and laches as also for the petitioners having failed to exercise their alternate efficacious remedy in form of a Revision under Section 397 of the Cr.P.C.. He submits that the summons in the complaint cases filed by the Complainant were issued to the petitioners in 2013. He submits that even taking into account the transfer and re-transfer of the complaints, the petitioners were eventually issued summons on the same in the year 2015-16. He submits that though the parties tried to settle their disputes, this in no manner prevented the petitioners from challenging the maintainability of the complaints. He submits that the present set of petitions has been filed with a delay of more than nine years and, therefore, deserves to be dismissed on this account alone. In support of his submission, he places reliance on the judgment of this Court in ***Vipin Kumar Gupta v. Sarvesh Mahajan***, 2019 SCC OnLine Del 12349.

33. He further submits that a petition under Section 482 of the Cr.P.C. cannot be filed to overcome the period of limitation that would be applicable in case the petitioners were to file a Revision

under Section 397 of the Cr.P.C., which is, in fact, the proper remedy. He places reliance on the judgment of the Supreme Court in ***Prabhu Chawla*** (Supra); and of this Court in ***Satish Lamba & Anr. v. NCT of Delhi & Ors.*** (Order dated 14.09.2023 in Crl.M.C.4396 of 2023).

34. On merits, he submits that the submissions made by the learned counsels for the petitioners raise disputed questions of facts, which cannot be adjudicated by this Court while exercising its jurisdiction under Section 482 of the Cr.P.C; these disputes are best left to be determined by the Trial Court to adjudicate on after appreciation of evidence led by both the parties. In support, he places reliance on the judgments of the Supreme Court in ***HMT Watches Ltd. v. M.A. Abida & Anr.***, (2015) 11 SCC 776; ***Womb Laboratories Pvt. Ltd. v. Vijay Ahuja & Anr.***, 2019 SCC OnLine SC 2086; and, ***Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) & Anr.***, 2022 SCC Online SC 513.

35. On merits, he submits that in terms of Clause 4.2 of the SSSA, the Complainant had to exercise his option to offer the shares for buy-back by the petitioners within a period of 27 months. He submits that this option was exercised by the Complainant within the said period vide its notice dated 04.10.2012. He submits that Clause 18.2 of the SSSA relied upon by the petitioners is merely for raising a presumption of the receipt of the notice and does not in any manner control the period within which the notice for buy-back of the shares has to be given.

36. He submits that as far as the reliance of the petitioners on the letter dated 15.07.2010 is concerned, the same also cannot be accepted

in view of Clause 4.2 of the SSSA, which clearly provides that after the expiry of 21 months and till the period of 27 months of the effective date, the period of notice would correspondingly be reduced.

37. On the submission of the learned counsels for the petitioners that the notice has not been addressed to the SGPL, he submits that the notice had been issued to the Directors/Shareholders/Promoters of the SGPL. He submits that this is deemed to be a notice issued to the SGPL itself. In support, he places reliance on the judgment of this Court in ***Sarabjit Singh v. State of NCT of Delhi & Ors.***, 2018 SCC Online Del 12257.

38. He further submits that there was also a breach of obligations by the promoters and the SBHPL of the terms of the SSSA. He submits that this also entitled the Complainant to exercise his option to offer the shares for buy-back. He submits that in terms of Clause 6 of the SSSA read with the letter dated 15.07.2010, the petitioners had given their personal guarantee on the fulfillment of the obligations of buy-back of shares and, therefore, they cannot now escape their liability on technical grounds.

39. He further submits that as far as the plea of the petitioners that both sets of cheques, that is, the cheque issued on behalf of the SGPL and the cheques issued by the petitioners in their own personal capacity, could not have been presented for encashment or complaints on their dishonour could not have been filed by Complainant, also has no merit. He submits that the total liability owed by the petitioners in terms of the SSSA is much more than the amount of the cheques issued in the name of the company and in the personal capacity of the

petitioners. He submits that in terms of the SSSA, the petitioners are to repay not only the purchase price of the shares, that is, Rs.2.50 crores, but also the amount invested by the Complainant towards repayment of Bank loans and interests, renovation cost, interest on the above amounts, and notional increase on the value of the immovable property. He submits that the liability is also admitted in the balance sheet of the SBHPL, which amounts to an admission of debt in terms of the judgment of the Supreme Court in ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr.***, 2021 SCC OnLine SC 321.

40. Countering the submission of the learned counsels for the petitioners that the cheques in question were not issued for the debt or liability in present, but only as security, and, therefore, complaints under Section 138 of the NI Act are not maintainable, the learned counsel for the Complainant, placing reliance on the judgments of the Supreme Court in ***Dashrathbhai Trikambhai Patel*** (Supra); ***Sripati Singh v. State of Jharkhand & Anr.***, 2021 SCC OnLine SC 1002; and ***Sunil Todi & Ors. v. State of Gujarat & Anr.***, 2021 SCC Online SC 1174, submits that the debt or liability is to be considered on the date of presentation of the cheques; if such debt or liability exceeds the amount of the cheques on the said date, a complaint under Section 138 of the NI Act would be maintainable.

41. He submits that in the present case, as the petitioners had failed to buy-back the shares in spite of the notice dated 04.10.2012, the liability accrued, for which the Complainant rightly presented the cheques, and, on the dishonour, filed the complaint cases. He submits

that the terms '*any debt*' or '*other liability*' in Section 138 of the NI Act have to be read in the widest possible sense. In support, he places reliance on the judgment of the Supreme Court in ***ICDS Ltd. v. Beena Shabeer & Anr.***, (2002) 6 SCC 426; and of this Court in ***Four Seasons Energy Ventures Pvt. Ltd. & Ors. v. State of NCT of Delhi & Anr.***, 2012 SCC OnLine Del 3361 and ***K.S. Bakshi & Anr. v. State & Anr.***, 2007 SCC OnLine Del 1481.

***Analysis and findings***

42. I have considered the submissions made by the learned counsels for the parties.

43. At the outset, I find merit in the submission made by the learned counsel for the Complainant that the present set of petitions is liable to be dismissed on the ground of delay and laches as also for the failure of the petitioners to avail of their alternate efficacious remedy in form of Revision Petitions under Section 397 of the Cr.P.C.

44. It need not be emphasized that powers under Section 482 of the Cr.P.C. are discretionary in nature and though there may not be a total ban on the exercise of such power where the situation so warrants, at the same time, there are limitations of self-restraint that are recognized and followed by the Courts in exercising this jurisdiction. One such limitation is where the petitioner had an alternate efficacious remedy, however, did not avail of the same within the period of limitation and thereafter filed the petition under Section 482 of the Cr.P.C. to overcome the objection of limitation. Similarly, the Courts have refused to entertain a petition under Section 482 of the Cr.P.C. where

it is filed with unexplained delay and laches and in the meantime, the trial has proceeded.

45. In ***Prabhu Chawla*** (Supra), the Supreme Court quoted with approval its earlier judgment in ***Madhu Limaye*** (Supra), wherein it had been held that though availability of an alternate efficacious remedy of a Revision under Section 397 of the Cr.P.C. does not affect the amplitude of the inherent power under Section 482 of the Cr.P.C. that the High Court possesses, at the same time, easy resort to inherent power is not to be allowed except under compelling circumstances; it should not invade areas set apart for specific power under the Cr.P.C. itself. It was held that while it is true that Section 482 of the Cr.P.C. is pervasive, it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2) of the Cr.P.C..

46. This Court in ***Vipin Kumar Gupta*** (Supra), placing reliance on its earlier judgment in ***Rajesh Chetwal v. State*** Neutral Citation no.2011:DHC:4313, held that though there is no period of limitation prescribed for filing of a petition under Section 482 of the Cr.P.C., the principles of inordinate delay and laches shall be applicable, and where such petitions are filed with an inordinate delay and laches, this itself shall be a ground to dismiss the same.

47. The other judgments relied upon by the petitioners on this issue are given on the peculiar facts of the said cases, where the Courts have found that there were compelling circumstances to justify the exercise of the powers under Section 482 of the Cr.P.C.. I do not find any such compelling circumstances being shown in the present set of petitions.

48. In the present case, summons had been issued to the petitioners

on the complaints by Orders dated 27.07.2013. Thereafter, in view of the judgment of the Supreme Court in ***Dashrath Rupsingh Rathod*** (Supra), these complaints were transferred to the Court of the learned JMFC, Gurugram, Haryana. Even that Court had issued summons to the petitioners way back on 26.09.2014. The complaints were then re-transferred to the learned Trial Court in 2015. From 2015 till 2022/2023, even though the parties may have been trying to settle their disputes till somewhere about 2018, the petitioners did not challenge the maintainability of the Complaints, instead continued to participate in the settlement process, may be to gain time. The petitioners also did not challenge the orders summoning them as accused in the complaint case in form of a Revision under Section 397 of the Cr.P.C. The settlement process, therefore, cannot give a reason to the petitioners to not challenge the maintainability of the complaints or the orders summoning them before this Court at an earlier stage. As observed above, though there is no period of limitation prescribed for a petition under Section 482 of the Cr.P.C., the same, if filed with delay and laches, may not be entertained by the High Court where the petitioner does not offer any reasonable justification for such inordinate delay in filing of the petition. Reference in this regard can be made to the judgment of the Supreme Court in ***Londhe Prakash Bhagwan v. Dattatraya Eknath Mane & Ors.***, (2013) 10 SCC 627.

49. Clearly, the petitioners have let the water flow and the proceedings to continue and it is only when the complaint cases have reached the stage of recording of the Complainant's evidence that they woke up from their slumber to file the present petitions and challenge

the maintainability of the same. I also find the challenge, at this belated stage, to be *mala fide* and intended to cause further delay in the adjudication of the complaint cases.

50. The petitions are, therefore, liable to be dismissed not only on account of inordinate delay and laches, but also on account of the petitioners not availing of their alternate efficacious remedy in the form of Revision Petition, but instead filing these petitions much beyond the period of limitation and with delay that would have haunted them had they filed the Revision Petitions.

51. Even otherwise, I find no reason to interfere in the complaint cases in exercise of powers under Section 482 Cr.P.C..

52. As noted hereinabove, the primary challenge of the petitioners to the maintainability of the complaint cases is the non-compliance of the Complainant with the provision of Clause 4.2 read with Clause 18.2 of the SSSA, that is, inadequate period of notice and not giving of notice to the SGPL.

53. I shall first reproduce the above Clauses of the Agreement. Clause 4 of the SSSA reads as under:-

> *"**4. TRANSFER OF SHARES***
>
> ***4.1 Restriction.** No Shareholder shall, for a period of six months from the Effective Date, directly or indirectly, sell, transfer, assign, pledge, hypothecate, or otherwise dispose of or encumber any part of or interest in the legal or beneficial ownership, including in the event of the death or bankruptcy of a Shareholder, ("**Transfer**") of any Shares to any third party unless such Transfer is in accordance with the terms of this Agreement. Any sale, assignment, transfer, pledge, hypothecation or other encumbrance or*

*disposition of Shares not made in conformance with this Agreement shall be null and void, shall not be recorded on the books of the Company and shall not be recognized by the Company.*

***4.2*** *After expiry of the aforementioned period of six months, and within the next 15 months, i.e. upto the expiry of the 21st month, the Investor may give six months notice to SG of its intention to sell its shareholding. After the expiry of the twenty one months, the notice period shall stand correspondingly reduced, if any, to the remainder of 27 months.*

***4.3*** *In the event that the Investor chooses to exercise this option, the put purchase price of Rs.2,50,00,000, [two crores and fifty lakhs only), any amount paid towards repayment of bank loan and interest thereon and any further amounts tendered by him towards renovation costs, shall be reimbursed by SG, SBH and the promoters alongwith interest @12.5% per annum compounded annually. Furthermore the immoveable property, Kamal Retreats, shall be independently valued and if the value of the property has increased, an amount equivalent to 10% of the notional net increase in value shall be given to the Investor.*

***4.4*** *SG, SBH and the promoters rights to transfer their shares shall stand restricted as contained hereinafter in this Agreement."*

54. A reading of the above clause would show that for a period of 6 months from the 'Effective Date', which is the date of the Agreement itself, that is, 08.07.2010, there is a lock-in period where the Shareholders cannot transfer the shares to any third party. After the expiry of 6 months and within the next 15 months, that is, up to the expiry of 21 months, the Complainant/Investor may give six months' notice to SGPL of its intention to sell its shareholding. Clause 4.2

further provides that after the expiry of 21 months and till the expiry of 27 months, the Complainant may give such notice, the period whereof shall stand correspondingly reduced. In the present case, the Complainant had issued the notice dated 04.10.2012 seeking to exercise his rights to sell the shares. This notice is, therefore, admittedly before the expiry of 27 months from the Effective Date of the SSSA.

55. The petitioners have, however, relied on Clause 18.2 to submit that the notice will be deemed to have been given only after 7 days of its posting. They relied on Clause 18.2 of the SSSA, which is reproduced hereinbelow: -

> *"**18. NOTICES***
>
> *xxxx*
>
> ***18.2 Delivery.** All notices shall be deemed to have been validly given on the expiry of 7 (seven) days after the expiry of posting if transmitted by registered airmail or by courier."*

56. The above clause, *prima facie*, appears to be incorporated only to introduce a deeming fiction for the service/delivery of notice. What effect it shall have on Clause 4.2 of the SSSA shall have to be considered by the Trial Court after hearing the parties and considering their evidence. This question may not be answered at this stage by this Court without letting the parties lead their respective evidence.

57. As regards the plea of the petitioners that the notice is not addressed to SGPL, as noted hereinabove, it is the case of the Complainant that the notice is addressed to the petitioners who were the Directors and Promoters of SGPL and, therefore, in terms of the

judgment of this Court in ***Sarabjit Singh*** (Supra), which has also been affirmed by the Supreme Court in ***M Tech Developers Private Limited v. State (NCT of Delhi) & Ors.*** (2019) 14 SCC 806, this would be a deemed notice to the company, that is, the SGPL itself. I, *prima facie,* find force in the submission of the learned counsel for the Complainant.

58. The liability of the petitioners also arises from their own letter dated 15.07.2010, which, *inter alia*, obliges them as under: -

> *"3) That, in view of your high sensitivity towards safety and growth of your investment, and our faith in our project as warranted by our representations, the 3 promoters in their individual as also in their official capacities as directors of SG AND SBH has agreed to give you an option of opting out of the project any time after a minimum of 6 months and a maximum of 27 months. You will notify us in writing of your intention to opt out by giving* ***us*** *6 months notice and the agreed amount as mentioned in the Agreement shall be repaid to you within the six months from date of notice. i.e. Earliest notice can be issued by February 1, 2011 and we have the option to clear that payment anytime within 6 months i.e. August, 1, 2011.*
> *4) That you shall continue to be shareholder and director during this entire period.*
> *5) That to allay your fears and anxieties still further the undersigned 3 have named a minimum buyback price of Rs. 2.5 crores + 12.5% interest compounding monthly for which following undated cheques are being issued towards principal amount and interest and the services rendered by you towards finalization of the deal of acquisition of the hotel. The cheques are from Swift Global (75% shareholder of SG), and individual cheques of the 3 undersigned promoters. If and when the need arises to en cash the same, you will be*

*informed by the undersigned as to which set of cheques need to be deposited. If you are not informed then the personal cheques may be deposited and you are entitled to put a date on the said cheques when due. The details of the cheques are as under:*

| | | | |
|---|---|---|---|
| *613976* | *IDBI Bank Sanyam* | *2900000/-* | |
| *613977* | *IDBI Bank Sanyam* | *5000000/-* | |
| *496273* | *IOB Sachin* | *3100000/-* | |
| *496274* | *IOB Sachin* | *5000000/-* | |
| *000028* | *AXIS Bank* | *25000000/-* | *SG* |
| *125163* | *AXIS Bank Aakash* | *6500000/-* | |
| *125164* | *AXIS Bank Aakash* | *2500000/-* | |

*Interest cheques will be issued at time of settlement date."*

(Emphasis supplied)

59. The letter, therefore, requires the notice to be given to the three individuals who are the petitioners herein. The effect of the above letter would also have to be considered by the learned Trial Court on the conclusion of the evidence of the parties.

60. As far as the plea of the petitioners that both sets of cheques could not have been presented by the Complainant for encashment is concerned, the same also cannot be accepted at this stage to quash the complaints. In terms of SSSA read with the above letter dated 15.07.2010, the cheques were issued not only for the buy-back of the shares by the company but also for the repayment of the other investments made by the Complainant and interest accrued thereon. The learned counsel for Complainant has submitted that the amount

owed in terms of the SSSA and the letter dated 15.07.2010 surpasses the amounts mentioned in the cheques. These again are issues to be determined by the learned Trial Courts, and this Court cannot enter into such disputed questions of facts at this stage.

61. In ***Sunil Todi & Ors.*** (Supra), the Supreme Court has observed as under:-

> *"**31.** The object of the NI Act is to enhance the acceptability of cheques and inculcate faith in the efficiency of negotiable instruments for transaction of business. The purpose of the provision would become otiose if the provision is interpreted to exclude cases where debt is incurred after the drawing of the cheque but before its encashment. In Indus Airways, advance payments were made but since the purchase agreement was cancelled, there was no occasion of incurring any debt. The true purpose of Section 138 would not be fulfilled, if 'debt or other liability' is interpreted to include only a debt that exists as on the date of drawing of the cheque. Moreover, Parliament has used the expression 'debt or other liability'. The expression "or other liability' must have a meaning of its own, the legislature having used two distinct phrases. The expression 'or other liability' has a content which is broader than 'a debt' and cannot be equated with the latter. In the present case, the cheque was issued in close proximity with the commencement of power supply. The issuance of the cheque in the context of a commercial transaction must be understood in the context of the business dealings. The issuance of the cheque was followed close on its heels by the supply of power. To hold that the cheque was not issued in the context of a liability which was being assumed by the company to pay for the dues towards power supplied would be to produce an outcome at odds with the business dealings. If the company were to fail to*

*provide a satisfactory LC and yet consume power, the cheques were capable of being presented for the purpose of meeting the outstanding dues.*

*xxxx*

***34.*** *The order of this Court in Womb Laboratories holds that the issue as to whether the cheques were given by way of security is a matter of defence. This line of reasoning in Womb Laboratories is on the same plane as the observations in HMT Watches, where it was held that whether a set of cheques has been given towards security or otherwise or whether there was an outstanding liability is a question of fact which has to be determined at the trial on the basis of evidence. The rationale for this is that a disputed question of this nature cannot be resolved in proceedings under Section 482 CrPC, absent evidence to be recorded at the trial.*

*xxxx*

***54.*** *In the present case, it is evident that the principal grounds of challenge which have been set up on behalf of the appellants are all matters of defence at the trial. The Magistrate having exercised his discretion, it was not open to the High Court to substitute its discretion. The High Court has in a carefully considered judgment, analysed the submissions of the appellants and for justifiable reasons has come to the conclusion that they are lacking in substance."*

62. Recently in ***Rathish Babu Unnikrishnan*** (supra), the Supreme Court has again cautioned that power under Section 482 of the Cr.P.C. should not be exercised by the High Court to scuttle a complaint at an initial stage and in a mechanical manner. It was further held that disputed questions of facts are best left to be determined by the

learned Trial Court on a complete trial. I may quote from the said judgment 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."*

*(Emphasis supplied)*

63. As regards to the submission made on behalf of the petitioners that they had resigned from the post of Directorship before the presentation of the cheques, the same cannot also absolve the petitioners of their liabilities under Section 138 of the NI Act. At this stage, it is important to note that the petitioners are, admittedly, the signatories of the cheques in question, that is, the cheques issued in the name of the Company as also their own individual names, and the transactions and execution of the SSSA are not denied by the petitioners. It is also not denied that they have been described in the SSSA and in the letter dated 15.07.2010 as the Directors and Promoters and as being in charge of the affairs of the Companies.

64. In ***S.P. Mani & Mohan Dairy v. Dr.Snehalatha Elangovan***, (2023) 10 SCC 685, it has been held that any person who was in-charge of or in control of the affairs of the company when each of the series of acts of commission and omission essential to complete the commission of offence by the company was being committed and which eventually gave rise to the offence, are all liable to be prosecuted. I may quote from the said judgment as under: -

> *"**34.** The seminal issue raised and required to be settled in the present case is one relating to a person liable to be proceeded against under the provisions of sub-section (1) of Section 141 for being in-charge of and responsible to the company "at the time the offence was committed." It would, therefore, be important to find out the "time" when the offence under*

*Section 138 can be said to have been committed by the company. It is commonplace that an offence means an aggregate of facts or omissions which are punishable by law and, therefore, can consist of several parts, each part being committed at different time and place involving different persons. The provisions of Section 138 would require a series of acts of commission and omission to happen before the offence of, what may be loosely called "dishonour of cheque" can be constituted for the purpose of prosecution and punishment. It is held by the Supreme Court in K. Bhaskaran v. Sankaran Vaidhyan Balan, that :*

> *"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The 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."*

***35.*** *Different persons can be in-charge of the company when each of the series of acts of commission and omission essential to complete the commission of offence by the company were being committed. To take an example, in the case of a company, "A" might be in charge of the company at the time of drawing the cheque, "B" might be in charge of the company at the time of dishonour of cheque and "C" might be in charge of the company at the time of failure to pay within 15 days of the receipt of the demand notice. In such a case, the permissibility of prosecution of A, B and C, respectively, or any of them would advance the purpose of the provision and, if none can be prosecuted or punished, it*

*would frustrate the purpose of the provisions of Section 138 as well as Section 141.*

***36.*** *The key to this interpretation lies in the use of the phrase:"every person shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly" as it occurs in sub-section (1) of Section 141 and the use of the phrase "provided that nothing contained in this sub-section shall render any person liable to punishment if he proves…" that occurs in the first proviso. Every person who was in charge of and was responsible to the company for the conduct of its business at the time any of the components necessary for the commission of the offence occurred may be "proceeded against", but may not be "punished" if he succeeds in proving that the offence was committed without his knowledge and despite his due diligence; the burden of proving that remaining on him.*

***37.*** *Therefore, it also has to be held that the time of commission of the offence of dishonour of cheque cannot be on the stroke of a clock or during 15 days after the demand notice has to be construed as the time when each of the acts of commission and omission essential to constitute the offence was committed. The word "every" points to the possibility of plurality of responsible persons at the same point of time as also to the possibility of a series of persons being in charge when the sequence of events culminating into the commission of offence by the company were taking place."*

65. As far as the submission of the learned counsel for Mr.Akash Mishra that in view of the registration of the FIR, the complaint proceedings must be stayed, is concerned, I again find no merit. The learned counsel for Complainant has submitted that the said complaint/FIR is not for the dishonour of the cheques but for other

fraudulent acts of the petitioners in relation to the SSSA and the transactions between the parties. In any case, these are matters to be considered by the learned Trial Court and cannot be used for seeking quashing of the complaint cases against the petitioners.

***CONCLUSION:***

66. Keeping in view the above principles of law and considering the facts of the present case, I do not find any merit in the challenge of the petitioners to the Complaints or to the Impugned Orders.

67. Accordingly, the petitions along with the pending applications are dismissed. There shall be no order as to costs.

68. It is, however, clarified that any observation made in the present judgment shall not influence the learned Trial Court in the adjudication of the Complaint Cases.

69. As the Complaint Cases have been pending adjudication since the year 2013, the learned Trial Court is requested to expedite the adjudication of the same and make an endeavour to dispose them of within a period of six months of the first listing thereof post the present judgment.

**NAVIN CHAWLA, J**

**JULY 02, 2024/*rv*/AS**

*Click here to check corrigendum, if any*