



2025:DHC:7683



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

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Date of Decision: 03.09.2025+ **CRL.M.C. 6228/2025, CRL.M.A. 26360/2025 & CRL.M.A. 26359/2025**

SMT RAMA OBEROI

.....Petitioner

Through: Mr. Bibek Tripathi, Advocate.

versus

STATE NCT OF DELHI AND ANRRespondents

Through: Mr. Nawal Kishore Jha, APP for State.

CORAM: JUSTICE GIRISH KATHPALIA**JUDGMENT (ORAL)**

1. Petitioner seeks quashing of order dated 12.06.2025 passed by the learned trial magistrate, whereby the petitioner was summoned to face trial under Section 138 of Negotiable Instruments Act.

2. After hearing learned counsel for petitioner, I do not find it a fit case to even issue notice.

3. It is contended on behalf of the petitioner/accused that the complaint under Section 138 of the Act was filed premature since according to the statute, the complaint has to be filed after 45 days of the statutory notice. It is also argued that the cheques in question do not bear signatures of the petitioner/accused. Further, it is contended that since the respondent filed civil suit for recovery of the outstanding amount pertaining to same

CRL.M.C.6228/2025

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transaction for which the subject cheques were issued, the complaint case is not maintainable in the eyes of law.

4. It is trite that where both, a civil remedy as well as a criminal remedy for any transaction are available, the aggrieved person can avail both the remedies. What has been filed by the present respondent through civil suit is a civil remedy pertaining to civil liability of the petitioner to pay the outstanding amount. The complaint case filed by the present respondent pertains to criminal liability where despite being served with a statutory notice after dishonour of cheque, the petitioner/accused opted not to pay. The goal of the civil suit is the decree of the suit amount while the goal of the criminal proceedings is imposition of punishment, which can be imprisonment as well. There is no bar on the respondent proceeding with both remedies simultaneously.

5. So far as the complaint being premature, the argument is completely devoid of merit. The period of 45 days under reference is not a lump sum consolidated period; it is 15 days (*after service of statutory notice, to pay vide proviso (c) to Section 138 of the Act*) plus 30 days (*to file complaint under Section 141(1)(b) of the Act*). The period of 30 days or 31 days (*the provision uses the expression “one month”*) is akin to the limitation period after arising of cause of action. The cause of action arises if by 15th day of service of the statutory notice, the cheque amount is not paid by the drawer. As submitted by learned counsel for petitioner, the statutory notice, which

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was issued in time, was served on the petitioner/accused on 22.09.2022. That being so, the time to make payment of the cheque amount expired on 07.10.2022 and the complaint case could be filed by 06.11.2022. As submitted by learned counsel, the complaint case was filed on 29.10.2022, that is within the prescribed period of limitation to file such complaint.

6. Lastly comes the argument of signatures on the cheques. Both cheques clearly bear in print, name of the present petitioner/accused as drawer/signatory of the cheques. Whether or not those signatures under name of the present petitioner/accused are genuine is a matter of trial. It is trite that the High Court while adjudicating upon a petition under Section 528 BNSS shall not carry out a mini trial.

7. The petition is not just devoid of merit but completely frivolous, so dismissed with costs of Rs.10,000/- to be deposited by the petitioner within two weeks with DHCLSC. The accompanying applications also stand disposed of.

8. Copy of this order be sent to the learned trial court to ensure compliance with regard to the costs.

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(JUDGE)**

SEPTEMBER 03, 2025/ry

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