

**(2012) 10 DEL CK 0049**  
**In the Delhi High Court**  
**Case No : Criminal M.C. 3682 of 2012**

Susamma Jacob

APPELLANT

Vs

Pyroguard Engineers P. Ltd. and Others

RESPONDENT

**Date of Decision :** 17-10-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142  
Penal Code, 1860 (IPC) — Section 406, 420

**Citation :** (2012) 9 AD 173 : (2012) 4 JCC 286

**Hon'ble Judges :** Manmohan, J

**Bench :** Single Bench

**Advocate :** Wills Mathews, for the Appellant; Manoj Ohri, APP for R-3/State, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Manmohan, J.

CRL. M.A. 18016/2012

Allowed, subject to just exceptions.

CRL. M.C. 3682/2012 & CRL. M.A. 18015/2012

1. Present petition has been filed u/s 482 Cr.P.C. seeking quashing of Criminal Complaint bearing No. 518/2012 u/s 138 read with Sections 141/142 of Negotiable Instruments Act, 1881 (for short "NI Act") pending before Metropolitan Magistrate, Karkardooma Courts, Delhi. Mr. Wills Mathews, Learned Counsel for the petitioner submits that the petitioner herein is a house-wife and Director of respondent No. 2-company. He states that as the petitioner has not signed the cheques in question and was a mere house-wife, she could not be arrayed as an accused.

2. Mr. Mathews further submits that the cheques in question were security

cheques. He points out that the cheques in question bore on endorsement at their back side stating that "commissioning of fire alarm system at Malegaon library in Goa". In this connection, Mr. Mathew places reliance upon paras 6 and 7 of the criminal complaint which are reproduced herein below:-

6. That the accused No. 2 & 3 was predetermined that after receiving the items/goods of valuable amount, they would not make the payment to the complainant and the accused No. 2 & 3 with having common intention and common object for achieving in their illegal object to cheat complainant had written false remark behind both the cheques, that both cheques had been issued on pretext of commissioning of fire alarm system at Malegaon, & Library at Goa but indeed the accused No. 1 and complainant had never entered into such contract of work at Malegaon & Library at Goa, hence the question of commissioning of work at Malegaon & Library at Goa by complainant does not arise. This act and working on the part of accused persons purely reflect that all the accused were having fraudulent and dishonest intention from the day of beginning and due to such reason he intentionally wrote those words behind the cheque which were not ever entered, hence beside u/s 138 of N.I. Act, the accused person are also liable for committing the offence u/s 420/406 IPC.

7. That the complainant in the beginning refused to accept both the cheques and instructed to accused No. 2 & 3 to issue fresh cheque but accused No. 2 & 3 with dishonest intention further assured to the director of complainant that they do not have another cheques and requested him to accept both the cheques on behalf of accused No. 1 and further requested to the director of complainant that due to some mistake, these words were written inadvertently behind the cheques and requested to complainant to deposit the both above said cheques at its banker for encashment of the same.

4. Having heard Learned Counsel for the petitioner, this Court is of the opinion that in view of the specific averments in the complaint and the fact that petitioner was admittedly a Director of the respondent No. 2-company, a presumption, at this stage, u/s 141 of NI Act would have to be drawn against the petitioner. The relevant portion of Section 141 of NI Act is reproduced herein below:-

141. (1) Offences by companies. If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

5. Needless to say, the aforesaid presumption is a rebuttable one but evidence to the contrary would have to be led by the petitioner.

6. This Court is also of the view that a perusal of paras 6 and 7 of the complaint does not show that cheques in question were security cheques. The case of the petitioner at the highest is that they were conditional cheques and as the

condition precedent has not been fulfilled, the said cheques could not have been encashed. The issue whether the condition precedent had been fulfilled or not is a question of fact which can be decided only after holding a trial. In any event, the complainant in paras 6 and 7 of the complaint have given their version of events and stated that the said condition was totally unconnected to the purchase of goods by the petitioner and respondent No. 2-company. In fact, the complainant has also pleaded before the trial court that in the alternative the petitioner and other accused should be tried for offence punishable under Sections 420/406 IPC. this Court is of the view that even this issue will have to be decided by the trial court after recording of evidence of both the parties. Consequently, present petition and application are dismissed but with no order as to costs. Needless to say the trial court after recording evidence would examine whether petitioner and respondent No. 2-company are liable for offence punishable u/s 138 of NI Act or in the alternative, for offence punishable under Sections 406/420 IPC.