



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

% **Reserved on: 23rd September, 2025**
Pronounced on: 06th January, 2026

+ **CRL. M.C. 4979/2017**

1. **CHINA TRUST COMMERCIAL BANK.**

(Now Known as M/S CTBC Bank Co. Ltd.)

Through Sh. Padmanabh Prabhakar

Constituted Attorney

25, Barakhamba Road

New Delhi-110001

2. **MRITUNJAY NARAYAN JHA**

Sr. Manager, Corporate Banking

China Trust Commercial Bank.

(Now Known as M/S CTBC Bank Co. Ltd.)

25, Barakhamba Road

New Delhi-110001

.....Petitioners

Through: Mr. Sanjay Gupta, Mr. Rajnish Gaur,
Mr. Ateev Mathur and Mr. Amol
Sharma, Advocates.

versus

1. **STATE, GOVT. OF NOT OF DELHI**

Through Chief Secretary

2. **ARUN JAIN**

Ex. Director

M/S Lilliput Kidswear Ltd.

Office At: D-95, Okhla Industrial Area

Phase 1, New Delhi-110020

also at

ARUN JAIN

Ex. Director

M/S Lilliput Kidswear Ltd.

Villa No. 34, Block Iv, Second Floor,



Eros Garden, Charmswood Village
Faridabad - 121009

....Respondents

Through: Mr. Utkarsh, APP for the State. Mr.
Ayush Jindal, Mr. Harsh Vashisht,
Ms. Harshita Bansal, Mr. Pankush
Goyal, Mr. Myank Sharma,
Advocates for R2.

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CRL. M.C. 559/2018

1. **MR. SARVJEET SINGH AHUJA**

S/o Shri Gurbax Singh Ahuja
R/o 2157/2, A/2, 2nd Floor
Guru Arjan Nagar, Patel Nagar
New Delhi-110008

2. **MR. SUBHASIS BANERJEE**

S/o Shri Sailendra Nath Banerjee
R/o Villa C 6, Ajmera Infinity,
Neeladri Road,
Electronic City,
Bangalore-560100

3. **MR. MAYANK GOEL**

S/o Shri Sushil Kumar Goel
R/o 10983, East Park Road,
Doriwalan,
New Delhi - 110005

.....Petitioners

Through: Mr. Sanjay Gupta, Mr. Rajnish Gaur,
Mr. Ateev Mathur and Mr. Amol
Sharma, Advocates.

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Goyal, Mr. Myank Sharma,
Advocates for R2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Petitions have been filed by China Trust Commercial Bank (*hereinafter referred to as "M/s CTBC"*) and the employees of M/s CTBC i.e. Mritunjay Narayan Jha, Sarvjeet Singh Ahuja, Subhasis Banerjee, Mayank Goel to challenge to challenge the **summoning Order dated 12.07.2017** in the CC No. 621809/2016 under Sections 409, 465, 467, 468, 471, 109, 120-B, and 34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) and the **Order dated 01.12.2017** whereby Non-Bailable Warrants (NBWs) were issued against them.



2. The **Complaint Case under Sections 409, 465, 467, 468, 471, 109, 120-B, and 34 IPC** along with an Application under Section 156(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as “CrPC”*) was filed by **Arun Jain**, Ex-Director of M/s Lilliput Kidswear Limited (*hereinafter referred to as “M/s LKL”*) (“the Complainant”), against the Petitioner Company i.e. **M/s CTBC** (Accused No.1), its senior officials and Managers/Director of this Bank and other unknown persons who may have been involved in committing the alleged cognizable offences.

3. It was stated in the Complaint that during **March 2011**, representatives of the Accused Bank approached the Company with proposals for business expansion and offered to provide loan facilities at concessional rates, emphasizing lucrative benefits if the loan was secured before the conclusion of that financial year.

4. As per the Loan Arrangement involved the Bank’s requirement for an “**undated**” cheque, the undated cheque was issued as a trust security as a protective measure, against the sanctioned loan amount, with an assurance that it would not be utilized for any other purpose. It was specifically mentioned in the loan Sanction Letter that the cheque would be retained strictly as an undated *security instrument*.

5. However, during **June/July 2012**, the Complainant was shocked to receive summons from Ld. MM, pertaining to a Complaint Case filed under Section 138 NI Act, from where the Complainant came to know that the cheque which had been entrusted for security purposes, was presented to the Banker by the Petitioner Company for encashment, which got dishonoured. Furthermore, while all other details in the Cheque were typed, the date had been filled in by hand. The accused persons, acting with malicious intent



and in conspiracy with one another, committed **criminal breach of trust** by misappropriating the cheque.

6. Furthermore, by filling the date in the cheque before presenting it to their bankers, without the knowledge, consent, or authorization of the Petitioner Company, a false document was created, thereby committing the offence of **forgery** for the purpose of **cheating**.

7. The accused persons conspired together to commit the aforementioned offences and have therefore, committed offences under **Section 120B IPC**, and common intention to defame the Complainant and cause wrongful loss to the company while securing wrongful gain for themselves, as contemplated under **Section 34 IPC**. Through their actions and omissions, they abetted the commission of offences within the meaning of Section 107 IPC, thereby committing an offence under **Section 109 IPC**.

8. *Thus, the Accused Persons are liable for the commission of the above-said offences.*

9. The **Petitioners have given the background** leading to the present Petition that the *Respondent No.2/Arun Jain (Complainant)* along with Directors of the Company approached the M/s CTBC seeking credit facilities. M/s CTBC granted *vide* Sanction Letter dated 31.03.2011, Working Capital Demand Loan Facilities amounting to Rs. 15 crores *vide* Sanction Letter dated 31.03.2011, under the signatures of Subhasis Banerjee (Accused No.7) as an authorized officer and CEO of the bank at the time of the transaction. Several documents were executed by the Company's directors which included a *Working Capital Demand Loan Agreement dated 06.04.2011 for Rs. 15 crores; Demand Promissory Note dated 06.04.2011 for Rs. 15 crores; a Letter of Continuity dated 06.04.2011, and a Letter of*



Set-off dated 06.04.2011, and a Cheque No. 026402 for Rs. 15,00,00,000/- in the name of M/s CTBC, in discharge of its liability toward the finance facilities.

10. Clause 16 of the Working Capital Demand Loan Agreement specifically stated that **in case of default in repaying the loan amount, including principal or interest, M/s CTBC would be entitled to enforce the securities provided by the Company.**

11. *Vide Letter dated 20.05.2011*; the Company undertook to include the Bank in its multiple banking arrangement with existing bankers. The Company also committed that if it failed to do so within six months, it would repay the entire facility. However, the Company failed to induct the Bank into the multiple banking arrangements.

12. Consequently, the Petitioner No.1, M/s CTBC issued a **Legal Notice dated 20.10.2011**, recalling the entire facility and demanded payment of Rs. 15 crores along with future interest at 13.50% per annum from 01.10.2011, and also the penal interest and other charges until actual payment. **As of 17.01.2012, an amount of Rs. 15,15,39,623.81 remained due and outstanding.**

13. Thereafter, Petitioner filed *Original Application No. 9/2012 under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993*, on 23.01.2012 before the Debt Recovery Tribunal, Delhi, for recovery of Rs. 15,15,39,623.81. The matter was reserved for judgment on 08.02.2018.

14. Since the Company failed to repay its debt, the Petitioner Bank also filed ***Winding-Up Petition No. 66/2012 under Section 433(e) of the***



Companies Act 1956 on 07.02.2012, before this Court. An Official Liquidator was appointed *vide* Order dated 06.01.2014.

15. Since no payment was forthcoming, M/s CTBC was compelled to present the **Cheque No. 026402 for Rs. 15 crores (dated 18.01.2012)** for encashment toward repayment of the outstanding amount. **However, the Cheque was dishonoured with the reason “ACCOUNT BLOCKED,” as per the Bank Returning Memo dated 09.03.2012.**

16. Thereafter, petitioner M/s CTBC filed CC No. 2489/2012 under **Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “NI Act”)** against the Respondent Company and Directors, who were summoned *vide* Order dated 22.05.2012, by the Ld. MM.

17. Aggrieved by this summoning Order, the Respondent No.2/Company along with the Directors, filed Crl. Rev. Pet. No. 55/2013 before the court of Ld. ASJ, which was dismissed *vide* Order dated 31.07.2013. The Respondent Company along with the Respondent No.2, then filed *Crl. M.C. No. 4160/2013 before this Court against Order dated 31.07.2013 and seeking to set aside the summoning Order 22.05.2012, which was later withdrawn.*

18. M/s CTBC then filed the Complaint under Section 138 NI Act before Ld. MM, Saket Court. **After taking cognizance of the offence, the Court issued summons against the Company and Respondent No.2 *vide* Order dated 12.11.2014.**

19. Aggrieved by this summoning Order, Respondent No. 2 along with director, Mr. Sanjeev Narula filed **Crl. Rev. Pet. 95/2015 which was dismissed by Ld. ASJ on 12.11.2014.**



20. The Respondent No.2, upon receiving Summons in the Complaint under Section 138 NI Act, filed an Application under Section 156(3) CrPC along with a **Complaint bearing No. 621809/2016 dated 08.01.2015 under Section 200 CrPC** against the Petitioners, i.e. M/s CTBC and various other bank officers, alleging offences under **Sections 409, 465, 467, 468, 471, 109, 120-B, and 34 IPC before Ld. MM, Saket Court, New Delhi.**

21. The Petitioners assert that the Complaint has been filed by the Respondent No.2 as retaliation and to unnecessarily harass the Petitioners. **Ld. MM dismissed the Respondent No.2's Application under Section 156(3) vide Order dated 11.02.2015, and directed him to lead evidence.** Aggrieved by Order dated 11.02.2015, the Respondent No.2 Crl Rev. Pet. No. 180/2015 before Ld. ASJ, Saket Court. *Ld. ASJ dismissed the Revision vide Order dated 26.04.2016 with a cost of Rs. 50,000.*

22. Respondent No.2 then led his pre-summoning evidence and examined two witnesses, namely himself as CW-1 and CW-2 Mr. Sanjeev Narula. Respondent No.2 had reiterated in his testimony, the allegations made in the Complaint that M/s LKL was approached by M/s CTBC for sanction of credit facility amounting to Rs.15 crores. He deposed that the bank officials and confirmed that the undated cheques will not be banked and that it was just a formality.

23. Mr. Sanjeev Narula as CW-2 deposed along the same lines as CW-1.

24. Ld. MM on appreciation of the evidence led on behalf of the Complainant, **summoned the Petitioners and other officers, under Section 409 IPC, vide Order dated 12.07.2017.**

25. The **Petitioners, M/s CTBC and Mritunjay Narayan Jha in Crl MC. 4979/2018, have challenged the Complaint filed by the Respondent**



No.2 as a gross abuse of legal process, filed as direct retaliation against the Petitioner Bank's Complaint under Section 138 NI Act for dishonour of Cheque No. 026402 for Rs. 15 crores. It has not been appreciated that the impugned Complaint discloses no cause of action, rather presents defences.

26. The Respondent No.2 has filed the present Complaint more than two years after the Bank sent its Notice under Section 138 NI Act, in regard to the dishonour of the cheque. There is no explanation for what prevented the Respondent No.2 from filing it earlier. This clearly demonstrates that the Complaint was filed merely to avoid legitimate Bank dues and to pressure and harass the petitioners under the guise of criminal proceedings.

27. The main grounds for Challenging the Summoning Order dated 12.07.2017 is that the Ld. MM are factually incorrect and legally unsound, warranting it to be set aside.

28. The Complaint fails to disclose that there was any *entrustment of any goods by the Complainant* to the Petitioner Bank, much less to the Petitioners' officers, who were not even remotely connected with the transactions, to have committed *criminal breach of trust*. There are no specific allegations of any nature against the petitioners in the Complaint. Only vague and unsubstantiated allegations have been levelled against them, in the Complaint. The allegations are essentially defences that the Respondent No.2 may raise in the Complaint under Section 138 filed by Petitioner No.1. A bare reading of the Complaint reveals that no offence of any nature was committed by the Petitioners, even if the Complaint's contents are accepted at face value. The dispute raised by the Complainant entails civil consequences, making the criminal Complaint, an abuse of legal process.



29. Ld. MM has not appreciated the contents of the Sanction Letter dated 31.03.2011 and Working Capital Demand Loan Agreement dated 06.04.2011, which specifically mentioned that in case of default in repayment, the Petitioner Bank would be entitled to enforce securities provided by the company and its directors, including the Respondent No.2.

30. Moreover, Section 20 NI Act provides that when an incomplete but signed cheque is handed to the payee or holder in due course, the drawer *prima facie* gives authority to fill in particulars such as date and amount and present it for payment.

31. Ld. MM has failed to appreciate that documents filed by the Complainant itself shows that credit facilities were enjoyed by the Respondent No.2. A bare reading of these documents reflects that no payments were made by the Respondent No.2 until the filing of the Section 138 Complaint.

32. The averments in the impugned Complaint directly contradict the Respondent's stand. In *Company Petition No. 66/2012*, the Respondent Company had categorically admitted the Petitioner bank's dues. Since it failed to honour its undertakings given in the Court to repay the Petitioner bank, the winding up of the Respondent Company was allowed and the official liquidator was appointed, by this Court in the Company Petition. Notably, the present Complaint was filed after the winding up Order was passed against the Respondent, indicating that it is an afterthought.

33. The averments made in the impugned Complaint, is entirely different, and contradictory to the defence taken in Revision Petitions filed to challenge the *summoning orders in the Section 138 Complaint*, wherein the Respondent No.2 stated that "*Account Blocked*" is not covered under Section



138. However, in the impugned Complaint, he alleges that the Bank misappropriated the cheque and presented it for encashment without prior information.

34. The Petitioners, Sarvjeet Singh Ahuja, Subhasis Banerjee, Mayank Goel in Crl. M.C. 559/2017 who are the Senior Managers/Officers of the Petitioner Bank have further asserted that they been implicated solely on account of their official positions in the bank. Having left the Bank's employment, they have no direct or indirect role in the entire transaction, rendering the impugned Order liable to be quashed regarding the Petitioners.

35. The Petitioners were merely the employees of the Petitioner Bank performing their duties in the normal course of banking activities. The Petitioner No.2/Subhasis Banerjee and Petitioner No. 3/Mayank Goel never dealt with the Company's Account in their personal capacity, nor did they carry out any activities constituting an offence under the law. The Petitioner No.1/M/s CTBC did not ever deal with the Company's Account and was made a party only because he filed the Section 138 NI Act Complaint, as the bank's Authorized Officer.

36. Thus, Petitioners' submit that they committed no offence and the Respondent No.2's Complaint is false, misleading, frivolous, and bogus.

37. The Petitioners, who are Accused Nos. 2, 7 and 8 in Complaint No. 621809/2016 have also challenged the **Orders dated 25.10.2017, and 01.12.2017 vide which Bailable Warrants and subsequently NBWs were issued by the Ld. MM.** on the ground that they never received any summons or warrants from the Ld. MM. Despite reports on the Bailable Warrants stating that the Petitioners had left the Bank's employment, Ld.



MM proceeded to issue NBWs without valid and proper service of summons and warrants upon the Petitioners. Even the Order dated 01.12.2017 confirms that the Petitioners had left the Bank's service, yet the Ld. MM ignored this fact and issued NBWs.

38. The Petitioners submitted that the Petitioners have never been served with any summons or warrants by the Court of the Ld. MM. It was only in December, 2017 that the Bank apprised the Petitioners of the impugned orders dated 25.10.2017 and 01.12.2017, whereby bailable warrants and thereafter non-bailable warrants were issued against them by the Ld. MM.

39. The **Respondent in his Reply has vehemently opposed the present Petitions.** It is contended that the Petitioners are seeking adjudication of their defence at the threshold, bypassing the procedure prescribed under the Code of Criminal Procedure. The pleas urged in the Petition, are matter of record which need to be tested and proved during the course of trial, to be faced by them. The plea of taking loan and consequential events, do not exonerate the Petitioners from their acts done in conflict of law of the land. The present petition, deserves to be dismissed.

40. Respondent No.2 has submitted that that the allegations of *absence of entrustment and personal non-involvement* are contrary to the contents of the Complaint, which specifically attribute specific roles to the Petitioners. The Petitioners have contended that they never dealt with the account of the Company in "*Personal Capacity*". However, is an implied admission of commission of act, but not in personal capacity. Further, leaving the services of bank after committing complained offences, would not exonerate the Petitioners from the offences committed by them during their tenure. These



aspects are a matter of trial and this ground is unsustainable and is liable to be rejected.

41. Even otherwise, the plea that the Complaint is a counterblast to proceedings under Section 138 NI Act, in any event does not constitute a valid ground for quashing.

42. It is contended that the impugned **Summoning Order** was passed after due compliance with Sections 202 and 204 Cr.P.C., and no illegality or perversity is made out. Section 409 IPC is punishable with a sentence of life imprisonment, hence there was no bar under law for the Ld. MM to take cognizance of the said offence, under Section 468 CrPC.

43. The contention regarding *misuse of a security cheque and applicability of Section 20 NI Act*, raises issues of fact and contractual understanding, which can only be adjudicated in trial.

44. Further, it is submitted that the Petitioners have suppressed material facts, including their knowledge that the Respondent/Company's Account had been blocked by the Income Tax Department and that a meeting of consortium lenders was convened to discuss the said blocking, in which the Petitioners and other bank representatives participated. Despite being aware that the Account was inoperative, the cheque was nevertheless presented for encashment.

45. It is further alleged that the date on the cheque was subsequently filled in by hand and the cheque was not presented immediately. Thus, these facts indicate *mala fide* intent and give rise to issues requiring evidence, which cannot be adjudicated in proceedings under Section 482 CrPC.

46. Reliance is placed on Krishan Kumar Variar vs. Share Shoppe, (2010) 12 SCC 485 wherein the Apex Court has observed that parties should not



rush directly to superior courts for seeking quashing but should approach the court below to seek their remedy.

47. *Hence, the Petitions are liable to be dismissed.*

48. Rejoinder and Written Submissions have been filed by the Petitioners, essentially reiterating the assertions made in the Petition.

Submissions heard and record perused.

49. The present two Petitions essentially arise out of a long-standing dispute between M/s CTBC and M/s Lilliput Kidswear Ltd., in respect of a Working Capital demand loan of Rs. 15 crores, sanctioned in March, 2011. Upon the Company/M/s *LKL*'s default in repayment, M/s CTBC initiated Recovery proceedings before the Debt Recovery Tribunal, Winding-up proceedings, and also *instituted a Complaint under Section 138 NI Act after the Cheque issued by the Company/M/s LKL towards discharge of its liability, was dishonoured.*

50. During the pendency of the proceedings under Section 138 NI Act, Respondent No.2/Arun Jain, an ex-director of the Company/M/s *LKL*, instituted *the present Complaint under Sections 409, 465, 467, 468, 471, 109, 120-B and 34 IPC, alleging that the Cheque in question was an undated security cheque which had been misappropriated and fraudulently presented by M/s CTBC and its officials. On the basis of the said Complaint, the Ld. MM passed the summoning Order dated 12.07.2017 under Section 409 IPC.* Thereafter, on the non-appearance of the Petitioners, Bailable Warrants and Non-Bailable Warrants *vide* Order dated 01.12.2017.

51. *The Petitioners, seek quashing of the Complaint filed by the Respondent and the Impugned Orders dated 12.07.2017 and 01.12.2017.*



52. The Respondent No.2 though had filed the Complaint against the Petitioners under Sections 465/467/468/471 IPC on the allegations that he had entrusted a cheque of Rs.15 crores, which according to him, ***has been misappropriated*** by the Petitioners by presenting the same for encashment. The Complainant alleged that this cheque ***being merely a security cheque***, was never intended to be presented for encashment and consequently, such act of the Petitioner resulted in an offence under Section 409 IPC.

53. The learned MM vide Order dated 12.07.2017 however, **summoned the Petitioners for the offence punishable under Section 409 IPC.**

54. The ***core question for determination*** is whether the essential ingredients of the offence under Section 409 IPC is disclosed in the Complaint filed by the Respondent and whether the Complaint is liable to be quashed, to prevent the abuse of the process of Court and secure the interest of justice.

55. The allegations of the Complainant in regards to offence under Sections 409 IPC are reproduced as under:

“11. That the accused persons had misappropriated the said cheque and banked the same with their banker which got dishonoured. Further a perusal of the complaint filed in court along with the cheque in issue was also annexed, clearly reflects that the date is filled in hand, do all other particulars are tight. It clearly reflects that the date was interpolated by someone in utter violation of the representations, terms and trust imposed upon the accused persons. ...

12. That the abovementioned cheque was entrusted to accused persons with the condition that the same shall be kept by accused persons as security but shall be returned back upon repayment of the loan, but the accused persons



with malafide intention in conspiracy with each other have committed criminal breach of trust by misappropriating the same by banking it with their banker and have committed criminal breach of trust. The above said accused persons were holding the cheque in trust for us which was meant to be returned to us, hence these people have committed the offence of criminal breach of trust punishable u/s 409 IPC. ”

56. Admittedly, the cheque in question which bears the genuine signatures of the authorised signatories of the Company, was handed over to the Petitioner Bank, by the Respondent Company as a security for the Loan of Rs. 15 crores extended to the Respondent under a ***Working Capital Demand Loan Agreement dated 06.04.2011***. The relevant Clauses of the Loan Agreement in regard to Security Cheque is as under:

*“The Borrower (Lilliput Kidswear Limited) agrees to borrow from the Bank and the Bank agrees to lend to the Borrower Working Capital Demand Loan up to the maximum extent of **Rs. 150,000,000/-** (Indian Rupees One Hundred Fifty Million Only) and in consideration of the Bank having agreed to grant/granted to the Borrower the said WCDL, the Borrower irrevocably agrees, undertakes and confirms to the Bank as follows: ...*

6. The Borrower hereby specifically agrees, confirms and undertakes that:

(i) this Agreement shall operate as a continuing security to the Bank, to be enforceable for me repayment of me ultimate balance and/or all sums remaining unpaid under me said WCDL now or hereafter, including all interest to become payable upon me said WCDL; and also all moneys lent, advanced, paid or incurred on the said WCDL or which may in future be advanced or incurred together with interest, discount, commission and other banking charges



and all other costs, charges and expenses which may be or become payable in connection therewith; ...

10. The Borrower will execute necessary Demand Promissory note and such further documents, forms and papers as the Bank/its nominees may in its/their discretion from time to time require.

20. Nothing contained in these presents shall be deemed to limit or adversely affect the rights and powers of the Bank under the security documents to be executed pursuant hereto, or under any letters of guarantee, or under any law.

21. The Borrower shall not assign or transfer any of its rights and/or obligations under this Agreement except with the prior written permission of the Bank. No delay in exercising or omission to exercise any right, power, or remedy accruing or available to the Bank upon any default or otherwise hereunder or under other security documents or letters of guarantee shall impair or prejudice any such right, power, or remedy, or be construed as a waiver thereof or as any acquiescence therein. Any single or partial exercise of any right, power, or remedy hereunder shall not preclude the further exercise thereof, and every right and remedy of the Bank shall continue in full force and effect until such right power or remedy is specifically waived by an instrument in writing executed by the Bank."

57. The **Clause 16** of this Loan Agreement specifically provided that the dues and all the obligations of the borrower (Respondent) shall immediately become due and payable irrespective of any agreed maturity and the bank shall be entitled to enforce its security upon the happening of the specified event (events of default). It is reproduced as under:



“16. At the option of the Bank, and without necessity of any demand upon or notice to the Borrower, all of which are hereby expressly; waived by the Borrower, and notwithstanding anything contained herein of in any security documents executed by / to be executed by the Borrower in the Bank’s favour, the said Dues and all of the obligations of the Borrower to the Bank hereunder, shall immediately become due and payable irrespective of any agreed maturity, and the Bank shall be entitled to enforce its security, upon the happening of any of the following events (“Events of Default”): ...”

58. The Security Cheque simply implies that a cheque is issued as a guarantee for a future obligation. It is given to ensure performance of a promise, such as payment or fulfillment of terms under a business or financial arrangement. The cheque is intended to be used only if the issuer fails to meet the agreed obligation, thereby serving as a “safeguard” for the recipient.

59. Therefore, in the Loan Agreement, it was specifically agreed between the parties that this security cheque given in discharge of contractual obligation would be encashed as and when liability arises. On the amount due under the loan agreement becoming payable, in respect of which the Complaint had defaulted, the cheque was presented for encashment.

60. The Complainant has alleged commission of offences under Sections 409 IPC on the premise that the cheque was entrusted to the Petitioners for a limited purpose **as security** and was dishonestly misappropriated and used to cheat the Company.

61. The question is ***whether presentation of the Security Cheque for realization of alleged outstanding amount, would constitute an offence of***



criminal breach of trust by Agent, which is punishable under Section 409 IPC.

62. To appreciate whether the offence of Section 409 IPC is disclosed, it would be relevant to reproduce the Sections.

63. Sections 406 reads as under:

“405. Criminal breach of trust:-

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

409. Criminal breach of trust by public servant, or by banker, merchant or agent:-

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

64. The offense of *criminal breach of trust* under Section 406 IPC requires two foundational elements: ***first***, an ***“entrustment”*** of property, and ***second***, a ***dishonest misappropriation*** of that property.

65. The term ***entrustment*** has been explained by the Apex Court in *State of Gujarat vs. Jaswantlal Nathalal*, (1968) 2 SCR 408, to the following effect:



*“The term “entrusted” found in Section 405 IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property” occurring thereafter - see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust - see Jaswantraji Manilal Akhaney v. State of Bombay [1956 SCR 483]. **The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an “entrustment”.***

66. Similarly, the Apex Court in Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta, (1996) 5 SCC 591 held that the expression **“entrusted with property”** used in Section 405 of the IPC, connotes that the property in respect of which criminal breach of trust can be committed, must necessarily *be the property of some person other than the accused* or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit.

67. As observed in the case of N. Raghavender vs. State of Andhra Pradesh, CBI, CrI. Appeal No. 5/2010 decided on 13.12.2021, the *entrustment of public property and dishonest misappropriation or use*



thereof in the manner provided under Section 405 IPC, are a *sine qua non* for making an offence punishable under Section 409 IPC.

68. In N. Raghavender, (supra), the requirement of Section 409 was explained. It was observed:

“44. No sooner are the two fundamental ingredients of ‘criminal breach of trust’ within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:

- (i) The accused must be a public servant or a banker, merchant or agent;*
- (ii) He/She must **have been entrusted**, in such capacity, with property; and*
- (iii) He/She must have committed **breach of trust** in respect of such property.*

*45. Accordingly, unless it is proved that **the accused, a public servant or a banker etc. was ‘entrusted’ with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. ...”***

69. These principles have been reiterated by the Apex Court in Delhi Race Club, (supra) and in the recent case of Apex Court in the case of Paramjeet Singh, (supra).

70. From the facts as narrated and also not disputed, it emerges that there was no entrustment of property by the Complainant to the Petitioners; rather the very fact that it was a security cheque under the Loan Agreement, which was intended to secure any debt and liability which may arise under the Loan Agreement in future and for the realization of the same, the cheque would be presented.



71. The cheque was voluntarily issued as part of a commercial transaction and formed an integral component of the contractual security mechanism, intended to be encashed in case of default of Loan liability. The issuance of a security cheque pursuant to a commercial loan transaction, does not create a fiduciary relationship, but merely evidences a contractual arrangement between creditor and debtor. There is neither any entrustment nor any misappropriation of the cheques; the presentation of which was strictly in terms of the Loan Agreement.

72. At best, the grievance raised is that there was no legally enforceable liability for which the cheque could have been presented. It may be a defence of the Complainant in the Complaint under Section 138 NI Act filed by the petitioner, but it does not constitute criminal breach of trust.

73. Even if the Complainant's allegation that the cheque was issued as a "security cheque" is accepted at face value, the same does not give rise to an offence under Section 409 IPC.

74. Crucially, the Complaint is conspicuously silent on any specific averment demonstrating *dishonest intention at the inception* of the transaction. It is well settled that a mere breach of contractual terms, absent fraudulent or dishonest misappropriation, does not satisfy the *mens rea* required under Sections 405 or 409 IPC.

75. Therefore, in the absence of entrustment in its criminal sense, existence of a fiduciary relationship, and specific allegations of dishonest misappropriation, the basic requirements for invoking Section 409 IPC are wholly lacking.

76. As already discussed above, no *prima facie* offence under Section 409 IPC is made out in the Complaint. Rather it is evident that the present



Complaint had only been filed as a counterblast to the Complaint under Section 138 NI Act. Also, by way of this Complaint, the Complainant intended to prove its defences which is required to be done in the Complaint under Section 138 NI Act. The present Complaint is blatantly an abuse of the process of law on which ground as well, it is liable to be quashed.

Conclusion:

77. In view of the aforesaid discussion, the impugned Order of the Ld. MM dated 12.07.2017 summoning the Petitioners under Section 409 IPC, and the Order dated 01.12.2017 whereby NBWs were issued are hereby, **set aside**.

78. The **Petition** is **allowed**.

79. The **Complaint Case** No. 621809/2016 filed by the Respondent No.2 is hereby **quashed** and the **Petitioners** are **discharged**.

80. The Petitions are disposed of accordingly, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 06, 2026

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