* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 23, 2026

% ***Pronounced on: August 11, 2026***

\+ **<u>CRL.M.C. 5410/2022, CRL.M.A. 21462/2022</u>**

RAJESH AGRAWAL **.....Petitioner**
Through: Mr. Alok Sinha, Adv.

Versus

M/S SARVODAYA TRADERS **.....Respondent**
Through: None.

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\+ **<u>CRL.M.C. 5411/2022, CRL.M.A. 21464/2022</u>**

RAJESH AGRAWAL **.....Petitioner**
Through: Mr. Alok Sinha, Adv.

Versus

M/S SARVODAYA TRADERS **.....Respondent**
Through: None.

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\+ **<u>CRL.M.C. 5412/2022, CRL.M.A. 21466/2022</u>**

RAJESH AGRAWAL **.....Petitioner**
Through: Mr. Alok Sinha, Adv.

Versus

M/S SARVODAYA TRADERS **.....Respondent**
Through: None.

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The petitioner/ accused person, by way of these petitions under *Section 482* of the Criminal Procedure Code, 1973, seeks quashing of the summoning orders dated 24.06.2019 (***impugned orders***) along with the

complaint bearing Ct. Case Nos.1294/2019, 1295/2019 and 1297/2019 respectively all entitled '*M/s. Sarvodaya Traders vs. M/s. Arihant Electro Transworld LLP & Ors.*' and all the consequential proceedings pending before the learned MM NI Act (EAST), Karkardooma Courts, Delhi.

2. Facts alleged in the complaint are such that, the respondent/ complainant entered into a Clearing and Forwarding Agent Agreement dated 20.11.2017 (***C&F Agreement***) with *M/s. Arihant Electro Transworld LLP* (***LLP***) in terms whereof, the complainant deposited a sum of Rs.50,00,000/- on 25.10.2017 as a refundable security. It is relevant to note that the petitioner herein as a partner of the said LLP, was a signatory to the said C&F Agreement. Thereafter, since the LLP had not paid outstanding dues, the respondent terminated the aforesaid C&F Agreement *vide* email dated 08.09.2018. Pursuant thereto, in discharge of partial legal liability towards refund of security amount of Rs.50,00,000/-, the respondent was issued *six* cheques each for a sum of Rs.5,00,000/-, all drawn on HDFC Bank, Kirti Nagar, New Delhi by the said LLP.

3. On presentation of the three cheques out of the said *six* cheques, bearing nos.000090, 000092, 000091 dated 09.11.2018, 13.11.2018 and 12.11.2018 respectively by the respondent before its Bank, they were returned dishonoured on the ground of '*insufficient funds*' *vide* returning memo dated 08.02.2019, 12.02.2019 and 11.02.2019 respectively.

4. As such, the respondent filed a complaint under *Section 138* of the Negotiable Instruments Act, 1881 (***NI Act***), against the LLP, one of its partner and the petitioner herein. The impugned orders have been passed by the learned Trial Court therein.

5. In the present petitions herein, as per petitioner since the cheques in question were issued by the accused no.3 before the learned Trial Court on 09.11.2018, 13.11.2018 and 12.11.2018, after the petitioner had already ceased to be a partner of the LLP i.e. with effect from 01.08.2018, and since he had no association with the affairs of the said LLP, the complaint as also the summons issued against him ought to be quashed.

6. *Per contra*, though there was no appearance on behalf of the respondent when the judgment in the present matter was reserved on 23.07.2026, however as per reply filed herein, as per respondent, the petitioner was/ is an active partner in the aforesaid LLP and any documents filed before this Court to state otherwise are false, manipulated and fabricated documents, veracity whereof are triable issues. Further, though he may not be the signatory to the cheques in question, however it was the petitioner who executed the C&F Agreement on behalf of the LLP and was/ is looking after the day to day affairs of the said LLP and cannot escape liability.

7. Heard and perused.

8. As per trite law, at the stage of summoning, whence evidence is yet to be led by the parties, the High Court cannot on assumption of fact(s), come to a finding of fact(s). A Co-ordinate Bench of this Court in ***R.L. Toshniwal vs. Indo Rama Synthetics, 2003 SCC OnLine Del 177*** has, while dealing with the same, held as under:

> *"4. This Court has consistently taken the view that once the accused persons have been summoned to face trial under Section 138 of the Act,* ***the question as to whether such persons had resigned from the accused company and had ceased to be responsible for day to day business of the***

accused company can be decided only after evidence is led by the parties at the appropriate stage. *Reference in this connection may be had to the case of Sunaina R. Mathani v. Nation al Capital Territory of Delhi, 2002 1 AD (Delhi) 78 : (2002) 61 DRJ 439 and Anurag Modi v. M/s. MSTC Ltd., 2002 1 AD (DELHI) 445 : (2002) 61 DRJ 220 Similar view has been taken by the Supreme Court in the case of Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala, 1983 CAR 7(SC) under Prevention of Food Adulteration Act and also in the case of Raj Lakshmi Mills v. Shakti Bhakoo, (2002) 8 Supreme Court Cases 236 which was a case under Section 138 of the Act. …"*

[Emphasis supplied]

9. As borne out from the facts herein, the present complaints are at an initial stage and the determination of questions as to whether or not the petitioner ceased to be a partner of the said company/ LLP and that he was not responsible for the day to day affairs of the company/ LLP at the relevant time, are all disputed questions of fact, which cannot be gone into comprehensively by this Court in present petitions, particularly whence the said claim of the petitioner has been disputed by the respondent. More so, whence the documents filed in support are *prima facie* self-serving documents.

10. Moreover, the onus to rebut the presumptions *qua* the aforesaid cheques, particularly, whence there is no denial *qua* the issuance of the said cheques on behalf of the said LLP to the respondent, is/ are *matters of trial*, which are yet to be tested, and about which there is/ are no concrete findings thereto. More so, since this Court cannot go into the said aspect(s), and that too in the present petitions while exercising its "*inherent powers*" under *Section 482* of the CrPC. Doing so would tantamount to pre-judging the case on merits, and that too, without according any chance to the

respondent to prove its case. The petitioner cannot be allowed to circumvent the due procedure of law, more so, whence the documents filed herewith by the petitioner are not before the learned Trial Court, and thus, are yet to be proven. What the petitioner is praying before this Court squarely falls within the domain of the learned Trial Court and is thus beyond the realm of the jurisdiction of this Court. This Court cannot proceed to do something which is not permissible.

11. Under such circumstances, the present petitions are way too *pre-mature*.

12. Accordingly, finding no merit, the present petitions, along with the pending application(s) are dismissed.

13. Needless to say, expression of view(s) on the merits, if any, are solely for the purposes of adjudication of the present petitions and shall have no bearing on the overall case/ trial involved.

SAURABH BANERJEE, J.

AUGUST 11, 2026/bh/DA