

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

% **Reserved on : 26th APRIL, 2012**
Pronounced on : 10th, May, 2012

+ **CRL.M.C. 646/2012**

P.K.BAJAJ & ANR. Petitioners
Through: Mr.Mohit Taneja, Advocate.
Versus

STATE (NCT of Delhi) & ANR. Respondents
Through: Mr.Navin Sharma, APP for
State – R-1.
Mr.Arun Vohra, Adv. for R-2.

AND

+ **CRL.M.C. 647/2012**

P.K.BAJAJ & ANR. Petitioners
Through: Mr.Mohit Taneja, Advocate.
Versus

STATE (NCT of Delhi) & ANR. Respondents
Through: Mr.Navin Sharma, APP for
State – R-1.
Mr.Arun Vohra, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

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1. Vide this common order, Crl.M.C. No.646/2012 and 647/2012 are being disposed of as identical pleas have been raised in both the petitions in respect of different dishonoured cheques i.e. cheques No.356793 & 356794 (subject matter of Crl.M.C. No.646/2012) and cheque No.356795 (subject matter of Crl.M.C. No.647/2012).

2. The present petitions under Section 482 CrPC have been filed impugning the order of learned Addl. Sessions

Judge in Criminal Revision No.37/2011 and 38/2011 vide which prayer of petitioners to quash the complaint and summoning order was declined.

3. Vide impugned order, learned Addl. Session Judge dealt with all the contentions raised in the revision petition challenging the summoning order and after rejecting the same, it was further held that some of the contentions like complainant is a professional money lender or the transaction is barred under Punjab Money Lender Act were subject matter of trial.

4. Learned counsel for the petitioner assailed the summoning orders by raising similar pleas that summoning orders are bad in law and the material filed by the complainant did not make out any case against them.

5. The complaint case No.356/2011 has been filed by Satish Miglani against the petitioners herein in respect of dishonoured cheques No. 356793 & 356794 and the complaint case No.357/2011 has been filed by Neelam Miglani, wife of Satish Miglani against the petitioners herein in respect of dishonoured cheque No. 356795. The facts of both the complaints cases have already been given in detail in the impugned orders and the same are not being reproduced while disposing of these petitions.

6. In the brief synopsis filed on behalf of the petitioners, the contentions raised, which are almost similar in both the petitions, are :-

(i) cheque return memo had been tampered with as bank memo dated 18.08.2011 not on record and only cheque return memo dated 13.08.2011 filed;

(ii) complaint did not prove the case during pre-

summoning evidence and just exhibited the documents;

- (iii) no notice was sent to M/s Bajaj Studio though the cheque was issued from its account;
- (iv) petitioner no.1 is a proprietorship concern, still respondent no.2 was summoned without any basis;
- (v) merely being authorized signatory does not make person liable except in the case of companies;
- (vi) the complainant being professional money lender, the transaction is barred under Punjab Money Lenders Act;
- (vii) service of notice not proved;
- (viii) payment of money by the complainant to the petitioners not proved;
- (ix) cheques in question were undated cheques given as security.

7. I have considered the grounds on which impugned orders have been sought to be quashed. Prima facie there existed a presumption of cheques having been given towards discharge of loan liability. Of course, the presumption is rebuttable and the onus lies on the petitioners to rebut the same. That can be done only during course of trial. The pleas taken by the petitioners in these petitions can only be raised and proved before Trial Court.

8. This court cannot examine the documentary and oral evidence which the petitioners have to lead before Trial Court. The disputed facts cannot be resolved in these proceedings.

9. The Supreme Court in ***State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors. 2004 (1) SCC 691*** while exercising jurisdiction under Section 482 CrPC, held that it is not permissible for the Court to act as if it was a trial Judge.

Even when charge is framed, at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not, for convicting the accused.

10. In the case **Zandu Pharmaceutical Works Ltd. & Ors. vs. Md. Sharaful Haque and Ors. (2005) SCC 122**, in para 8, it was held as under :-

'8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the code, (ii) to prevent abuse of the process of court and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possible arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo wrong in course of administration of justice on the principle "quando lex a liquid alicui concedit, conceder videtur et id sine quo resipase esse non protest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercise sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse

that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.'

11. It is settled that in a proceeding initiated on a complaint, exercise of inherent power to quash the complaint/summoning order is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If on reading the complaint as a whole, it appeared that on consideration of the allegations in the light of the statement made on oath by the complainant, the ingredients of the offence are disclosed, there would be no justification for interference by this Court in exercise of inherent power. At this stage, it is not for this Court to embark upon the sifting of entire evidence and form an opinion whether the accused is guilty or not, only consideration at this stage before this Court is to see whether there is prima facie indication of involvement of the accused or not.

12. On perusal of the complaints and the summoning orders, it can be gathered that the learned MM has applied his mind to the facts and the material placed on record which prima facie was sufficient to indicate involvement of the petitioners in the offence alleged against them. Quashing of complaints and summoning orders at preliminary stage will not only be detrimental to the case of

complainant but will also have the effect of denying the complainant his right to prove his case which will be against the spirit of law. Whatever pleas are available to the petitioners under law, they will have ample opportunity to prove the same during trial.

13. The petitions being without any merits, are hereby dismissed.

14. Registry is directed to send the copy of the order to learned Trial Court.

PRATIBHA RANI, J

MAY 10, 2012
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