

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M-30686-2018 (O&M)**Date of Decision:- 13.08.2018**

Dharamveer Verma

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Vikas Cuccria, Advocate for the petitioner.

P.B. BAJANTHRI, J.(ORAL)

The instant petition has been filed under Section 482 Cr.P.C. for quashing of Complaint No. 433/15 dated 24.08.2015 under Section 138 of Negotiable Instrument Act, 1881 (as amended upto date) (Annexure P-2) and summoning order dated 16.12.2014 (Annexure P-3).

2. Learned counsel for the petitioner submitted that complainant was abide by certain clauses imposed in the transaction like returning certain shares. In the absence of returning shares it is not appropriate for him to file a complaint in respect of disputed cheque. In other words, cheque was issued subject to certain conditions.

3. Cheque was issued subject to transfer of certain shares and after that complainant was authorized to submit the cheque in question for encashment. This plea cannot be accepted at this stage as it is a matter of evidence and record whether there was any such condition and that was not fulfilled. Prima facie it is evident that the cheque was complete with regard to encashment and it was dishonoured. There is only summoning order whereby petitioner was summoned to face trial. However, the petitioner has

remedy of revision as well as on the point of charge. If he holds such

document, he may avail such remedy, instead of rushing to this court.

4. The Supreme Court time and again held that invoking under Section 482 Cr.P.C. and setting aside any order or complaint like in the present case, complaint under Section 138 Negotiable Instrument Act, read with summoning order dated 16.12.2014 could not be interfered. Thus, petitioner has not made out a case in view of the decision of Supreme Court in the case titled as ***State of Orissa and another versus Saroj Kumar Sahoo***, reported in 2005(13) SCC 540. Relevant extract of judgment reads as under:-

11. As noted above, the powers possessed by the High Court under [Section 482 Cr.P.C.](#) are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See [Janata Dal v. H. S. Chowdhary, Raghubir Saran \(Dr.\) v. State of Bihar](#)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the

proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: [Dhanalakshmi v. R. Prasanna Kumar](#), [State of Bihar v. P. P. Sharma](#), [Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#), [State of Kerala v. O.C. Kuttan](#), [State of U.P. v. O.P. Sharma](#), [Rashmi Kumar v. Mahesh Kumar Bhada](#), [Satvinder Kaur v. State \(Govt. of NCT of Delhi\)](#), and [Rajesh Bajaj v. State NCT of Delhi](#),.

12. *The above position was again re-iterated in [State of Karnataka v. M. Devendrappa and Anr.](#), and [State of M.P. v. Awadh Kishore Gupta and Ors.](#),*

13. *In [Jehan Singh v. Delhi Administration](#), while considering a case under [Section 561-A](#) of the Code of Criminal Procedure, 1898 (in short the 'Old Code') corresponding to [Section 482 Cr.P.C.](#), it was observed as follows : (AIR p.1146)*

"Where at the date of filing the petition under [Section 561-A](#), no charge sheet or a complaint has been laid down in Court and the matter is only at the stage of investigation by Police, the Court cannot, in exercise of its inherent jurisdiction under [Section 561-A](#), interfere with the statutory powers of the Police to investigate into the alleged offence and quash the proceedings. Even assuming that the allegations in the FIR are correct and constitute an offence so

as to remove the legal bar to institute proceedings in Court, the Court cannot at that stage appraise the evidence collected by the Police in their investigation. Any petition under [Section 561-A](#) at such a stage is, therefore, premature and incompetent. (Sccp. 526, paras 16-18)"

14. *It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under [Section 482 Cr.P.C.](#), it is not permissible for the Court to act as if it was a trial Court. 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. In [Chand Dhawan \(Smt.\) v. Jawahar Lal and Ors.](#), it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under [Section 482 Cr.P.C.](#), which cannot be termed as evidence without being tested and proved."*

With the above observation, petition stands dismissed.

13.08.2018

pooja saini

Whether speaking/reasons

Whether Reportable:

**(P.B. BAJANTHRI)
JUDGE**

Yes/No

Yes/No