

\$~9 & 12 (*common order*)

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th September, 2018

+ CRL.M.C. 4483/2015, and Crl.M.A.15937/2015, 15939/2015,
2429/2016, 15787/2017

+ CRL.M.C. 5050/2015, and Crl.M.A.8420/2016, 15785/2017

MANOJ GODHA

..... Petitioner

Through: Mr. A. K. Vashishtha, Advocate

versus

VIJAY SHOURIE

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaints (CC No.1090/1/2005 and CC No.5123/1/2005) of the respondent alleging offence(s) punishable under Section 138 of the Negotiable Instruments Act, 1881, they having been committed on account of non-payment despite notice of demand served in the wake of dishonor of the cheque No.320715, dated 12.03.2005 and cheque No.320717 dated 07.04.2005, each for Rs.18,000/-, issued by the petitioner, after preliminary inquiry he stood summoned as accused by the court of Metropolitan Magistrate.

2. By the present petitions under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the petitioner (accused) seeks

quashing of the said criminal cases, *inter alia*, on the ground that the criminal action is an abuse of the process of law.

3. It appears from the pleadings in the criminal complaints and the present petitions as indeed the documents filed therewith, that the petitioner (the accused) was in occupation and use of certain portion of the property of the respondent (complainant) under a document described as License Deed, though pleadings also reflecting the relationship between the parties being one of lessee and lessor.

4. As per the case of the complainant in the criminal cases the cheques were issued towards rental for a certain period. It is the contention of the petitioner that he had vacated the premises in question prior to the date of the said cheques, there being no liability due on such account, the cheques having been issued as security should have been returned, their presentation leading to the prosecution being with intent to cause harassment. It is also the contention of the petitioner that rather than he owing money to the respondent, he is entitled to recover some amount from him and that, for this, and also seeking cancellation of the said instruments, he had filed a civil suit which is pending.

5. In the given facts and circumstances, it is clear that the petitions at hand, at their best, give rise to questions of facts. In absence of any unimpeachable evidence being presented, this court finds that the jurisdiction under Section 482 Cr.P.C. has been wrongly invoked, inasmuch as the issues raised would require adjudication only after evidence has been led.

6. In above context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330 need to be borne in mind.

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted,

or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

(emphasis supplied)

7. For the above reasons, this court declines to grant the prayers made in the petitions. The petitioner would have the liberty to raise his defences, including on the lines set out in the petitions at the trial.
8. The petitions are dismissed.
9. The pending applications also stand disposed of.

R.K.GAUBA, J.

SEPTEMBER 07, 2018

vk