IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Reserved On: 01.11.2021
Pronounced On: 09.11.2021

1. CRM-M-29886-2017 (O&M)

Nisha

Petitioner

Versus

Dharampal and another

Respondents

2. CRM-M-31980-2017 (O&M)

Nisha

Petitioner

Versus

Bag Poly International (P) Ltd. and another

Respondents

3. CRM-M-31984-2017 (O&M)

Nisha

Petitioner

Versus

Radhey Shyam and another

Respondents

4. CRM-M-32009-2017 (O&M)

Nisha

Petitioner

Versus

Bijender Singh and another

Respondents

5. CRM-M-32023-2017 (O&M)

Nisha

Petitioner

Versus

Virender Singh and another

Respondents

6. CRM-M-36662-2017

Nisha

Petitioner

Versus

Rohit and another

Respondents

7. CRM-M-36888-2017

Nisha

Petitioner

Versus

M/s Mahadev Handloom and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P.K. Hooda, Advocate for the petitioner.

Mr. S.S. Narula, Advocate for the respondent No. 1.

Mr. C.B. Goel, Advocate for the respondent No. 2.

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AVNEESH JHINGAN, J.

[1] These seven petitions under Section 482 of the Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') are filed for quashing of complaints under Section 138 of the Negotiable Instruments Act, 1881

[hereinafter referred to as 'Act']. The detail of complaints are tabulated as under:-

Complaint Case Number	Name of the complainant	Amount of Cheque (In Rs.)	Date of summoning order
1482/2017	Dharam Pal	9,50,000/-	1st June, 2017
1494/2017	Bag Poly International Pvt. Ltd.	20,00,000/-	3rd June, 2017
1399/2017	Radhey Shyam	19,00,000/-	22nd May, 2017
1335/2017	Bijender Singh	25,00,000/-	17th May, 2017
1424/2017	Virender Singh	19,00,000/-	24th May, 2017
573/2017	Rohit	22,00,000/-	7th June, 2017
1547/2017	M/s Mahadev Handloom	24,00,000/-	6th June, 2017

As similar facts are involved, these petitions are being decided by single order. The facts are being taken from CRM-M-29886-2017.

RELEVANT FACTS:

[2] The relevant facts necessary for adjudication are that marriage of petitioner was solemnized with Arun Mittal son of Babu Ram Mittal on 2nd February, 2012. Shortly after marriage, petitioner alongwith her husband went to USA and started residing there. They were blessed with a son on 23rd February, 2016. During her short stay in India after marriage, petitioner opened a bank account No. 32185162677 in the State Bank of India on 10th February, 2012. From June, 2015 onwards, their matrimonial relation faced rough

weather. After coming back to India, petitioner and her husband indulged into matrimonial litigation. Husband filed a divorce petition whereas petitioner filed petition for maintenance, complaint of domestic violence and demand of dowry.

[3] As per the complaint, the petitioner borrowed an amount of Rs.9,50,000/- in January, 2017 from Dharampal-complainant (respondent No.1) on assurance given by her brother-Munish and one Jeevan about her returning money. She issued a cheque No. 000030, dated 18th April, 2017 amounting to Rs.9,50,000/- drawn on State Bank of India, Subhash Colony, G.T. Road, Panipat Branch. On presentation, the cheque was dishonoured on 26th April, 2017 with the remarks "Funds Insufficient". Legal notice dated 12th May, 2017 was served, petitioner replied to the same. On failure to pay the amount, a complaint was filed in the Court of Judicial Magistrate 1st Class, Panipat [hereinafter referred to as 'trial Court'], vide order dated 1st June, 2017, petitioner was summoned.

[4] Notice of motion in these petitions was issued on 21st August, 2017, in the meantime, personal appearance of the petitioner before the trial Court was exempted till the next date of hearing. On 5th February, 2019, following order was passed:-

> *"In the fitness of things, respondent No.1 is directed to produce documentary proof of his source of income to prove that he had ability to pay Rs.9 lakhs to the petitioner on the alleged date and time, besides jamabandi of land to show that how much agricultural land or other properties moveable and immovable, he possessed or was owing on the date of advancement of loan of Rs.9 lakhs and whether accepting the cheque in question, had he obtained any*

pronote/agreement etc. from the petitioner. He is also directed to produce income tax returns for three years of the relevant period and forms 'J' in proof of selling his agricultural produce, if any.

Adjourned to 26.03.2019 for production of entire evidence detailed above with full particulars and documentary evidence. Any incomplete information furnished by him, would require to draw adverse inference against him that he has filed false complaint at the behest of Babu Ram Mittal-respondent No.2, who is father-in-law of petitioner.

It is made clear to learned counsel for respondent No.1 that, in case, this Court is not satisfied with the documents/proof so directed above, respondent No.1 has to appear in person.

Interim order to continue."

[5] Aggrieved of the order, complainant challenged it before the Supreme Court. The Supreme Court disposed of criminal appeal on 15th April, 2021 and following order was passed:-

"We have heard Mr. Dharamraj Ohlan, learned counsel for the appellant and Mr. Ashok Arora, learned counsel for the respondent.

Leave granted.

The High Court has in a Section 482 petition against the complaint made under Section 138 of the Negotiable Instruments Act passed an order in which it has directed the respondent No. 1 inter alia to produce documentary proof of his source of income together with land, jama bandis etc. We are of the view that this kind of interim order in a Section 482 petition cannot be passed. Either the quash petition be allowed or dismissed. The rest *is a matter for evidence to be taken up before the learned Magistrate. On this short ground, we set aside this order.*

We make it clear however that nothing in our order will be taken to be a reflection on the merits of the matter. The High Court may take up at the earliest the quash petition itself and dispose of the same on its own merits.

Mr. Ashok Arora, learned counsel appearing on behalf of the respondent wishes to produce certain additional documents in the High Court. This he may do subject to the High Court's permission.

The appeal is disposed of accordingly."

CONTENTIONS ON BEHALF OF THE PETITIONER:

[6] Mr. P.K. Hooda, learned counsel for the petitioner argues that complaints have been filed at the behest of Babu Ram Mittal, father-in-law of the petitioner (respondent No.2), as pressure tactics to the matrimonial dispute. The contention is that account of the petitioner was opened on asking of respondent No.2. Before leaving for USA, petitioner was asked to sign blank cheques. In her absence, account was operated by respondent No.2. It is submitted that the requirement of Section 138 of the Act of issuing cheque from the account 'maintained by him' is not fulfilled. Reliance is placed upon decision dated 1st July, 2019 of this Court in CRM-M-14537-2018 titled as ***Rajesh Mena Vs. State of Haryana and others.***

[7] It is argued that KYC (Know Your Customer) of the petitioner was updated by respondent No. 2 for which forged PAN Card was used. In the original PAN Card, name of the petitioner is mentioned

as 'Nisha Garg' whereas in the PAN Card given to the bank, the name mentioned is 'Nisha Mittal'.

[8] The contention is that petitioner had not taken any amount from the complainants. The complainants are known to the respondent No. 2, all the cheques bounced between 17th April, 2017 to 26thApril, 2017 which shows intention of the complainants to help in-laws of the petitioner. Reliance is placed upon the fact that petitioner, in June, 2017, got registered an F.I.R. No. 760, dated 28th June, 2017 under Sections 120-B, 34, 403, 406, 419, 420 and 498A IPC, alleging apart from other things, misuse of the cheques in question.

SUBMISSION ON BEHALF OF THE RESPONDENTS:

[9] Mr. S.S. Narula, learned counsel for the respondent No.1/complainant and Mr. C.B. Goel, learned counsel for respondent No.2 rely upon the pleadings of the replies filed. It is vehemently refuted that complaints have been filed by complainant in connivance with the respondent No.2. It is argued that cheques are signed by the petitioner. It is contended that disputed questions of fact are being raised in petition filed under Section 482 Cr.P.C. for quashing of complaint. It is further argued that thrice at the instance of the petitioner, F.I.R. No. 760 was investigated and thereafter cancellation report prepared which is pending before the Court concerned. Reliance is placed on Sections 118 and 139 of the Act to submit that under the Act, presumptions are in favour of the complainant.

[10] Learned counsel for respondent No.1 submits that matrimonial litigation of the petitioner is being used as a shield for non-payment of the amount due.

RELEVANT PROVISIONS:

[11] Sections 118, 138 and 139 of the Act are quoted below:-

SECTION 118 - PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENTS.

Until the contrary is proved, the following presumptions shall be made:-

*(a) **of consideration:**-- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

*(b) **as to date:**-- that every negotiable instrument bearing a date was made or drawn on such date;*

*(c) **as to time of acceptance:** that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

*(d) **as to time of transfer:**-- that every transfer of a negotiable instrument was made before its maturity;*

*(e) **as to order of indorsements:**-- that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

*(f) **as to stamp:**-- that a lost promissory note, bill of exchange or cheque was duly stamped;*

*(g) **that holder is a holder in due course:**-- that the holder of a negotiable instrument is a holder in due course :*

provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

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SECTION 138- DISHONOUR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN THE ACCOUNT.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of *money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-- For the purposes of this section, debt of other liability means a legally enforceable debt or other liability.

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SECTION 139 - PRESUMPTION IN FAVOUR OF HOLDER.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

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LEGAL POSITION:

[12] Following decisions of the Supreme Court would be relevant:-

- ***State of Haryana and others Versus Bhajan Lal and others, 1992 (Supp) 1 SCC 335.***

> *"108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."*

- ***Jugesh Sehgal Versus Shamsher Singh Gogi, (2009) 14 SCC 683.***

> *"9. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:*
>
> *(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;*
>
> *(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;*
>
> *(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;*

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

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11. In the case before us, it is clear from the facts, briefly noted above, and in para 3 of the complaint as extracted, that on receipt of the return memo from the bank, the complainant is stated to have realized that the dishonoured cheque was issued from an account which was not maintained by accused No.1--the appellant herein, but by one Shilpa Chaudhary. As a matter of fact and perhaps having gained the said knowledge, on 20th January, 2001, the complainant filed an FIR against all the accused for offences under Sections 420, 467, 468, 471, 406 of the Indian Penal Code (IPC). Thus, there is hardly any dispute that the cheque, subject matter of the complaint under Section 138 of the Act, had not been drawn by the appellant on an account maintained by him in the Indian Bank, Sonepat branch. That being so, there is little doubt that the very first ingredient of Section 138 of the Act, enumerated above, is not satisfied and consequently the case *against the appellant for having committed an offence under Section 138 of the Act cannot be proved.*

- ***Pulsive Technologies P. Ltd. Versus State of Gujarat (2014) 13 SCC 18.***

"14. The High Court also erred in quashing the complaint on the ground that the contents of the reply sent by the accused were not disclosed in the complaint. Whether any money is paid by the accused to the complainant is a matter of evidence. The accused has ample opportunity to probabilis his defence. On that count, in the facts of this case, complaint cannot be quashed."

- ***HMT Watches Ltd. Versus M.A. Abida, (2015) 2 RCR (Criminal) 366.***

"10. Having heard learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of N.I. Act stood uncomplied, even though the respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined

by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. ***In Suryalakshmi Cotton Mills Limited v. Rajvir Industries Limited and others[1],*** *this Court has made following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: -*

> *"17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.*
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> *xxx xxx xxx*
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> *22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal [pic]proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its*

> *jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.'*
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> *14. For the reasons as discussed above, we find that the High Court has committed grave error of law in quashing the criminal complaints filed by the appellant in respect of offence punishable under Section 138 of the N.I. Act, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the accused which were disputed ones. Such defences, if taken before trial court, after recording of the evidence, can be better appreciated."*

CONCLUSION

[13] During the pendency of these petitions, respondent No. 2 was impleaded as a party. The matter was referred to the Mediator attempting an amicable settlement between the parties but no fruit was yielded. At the time of arguments, learned counsel for the parties on specific query from the Court, submitted that there is no chance of settlement.

[14] The contention of petitioner is that two ingredients for invoking Section 138 of the Act are missing. Firstly that the account was not 'maintained by her' and secondly that 'cheques were not issued for discharging any debt or liability', rather it is a case of misuse of blank cheques signed by her.

[15] The presumption raised under Section 118 of the Act is that negotiable instrument drawn is for 'consideration'. As per Section 139 of the Act, unless contrary is proved, it shall be presumed that the cheque received was in the nature of discharge of debt or liability.

[16] It is settled law that complaint under Section 482 Cr.P.C. is to be quashed in rarest of rare cases, though the meaning of 'rarest of rare cases' is not similar as of Section 302 of IPC. The power of quashing is to be exercised sparingly. Quashing is not to be done mechanically or in a routine manner.

[17] The contentions that complaints are actually pressure tactics being used in the matrimonial dispute; the complainants are known to respondent No.2; allegations that blank cheques were got signed and usage of forged PAN Card for updating the KYC are the issues required to be proved by adducing evidence. These disputed facts cannot form basis for quashing of the complaints.

[18] The contention raised by learned counsel for the petitioner that account was not maintained by the petitioner is raised on the foundation that account was opened at the behest of respondent No.2. She handed over blank signed cheques to him which were misused. The account was being operated in her absence by the respondent No.2. Expounding on the issue raised would affect the trial in complaint. Suffice to say that account is in the name of the petitioner. There is no dispute that signatures on the cheques are of the petitioner, the account is of the petitioner and that on relevant date she could operate the account.

[19] Reliance upon the decision of this Court in ***Rajesh Meena's case (supra)*** is of no avail. The case is distinguishable on the facts. In that case, proceedings under National Company Law Tribunal were pending. The Interim Resolution Professional was appointed, he was seized of the management and operation of the corporate debtor. The

bank account was blocked before effective date, it was held that blocking of account could not be attributed to account holder.

[20] The argument that petitioner had not borrowed any amount from the complainants is a defence available to the petitioner for which an opportunity would be there before the trial Court. Section 139 of the Act raises presumption in favour of the holder of the cheque that cheque was issued for discharge of debt or liability, albeit presumption is rebuttable. The veracity of defence would be subject matter of the trial. It is not for this Court in the quashing petition to elucidate on the factual defence raised by the petitioner.

[21] The stand taken that FIR was got registered alleging misuse of cheque is noted to be rejected at this stage. The FIR was subsequent to issuance of legal notices and the matter is *sub-judice* in the Court.

[22] The case does not fall within parameters for quashing of complaints under Section 482 Cr.P.C., the petitions are dismissed.

[23] However, it is clarified that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

[24] Photocopy of this order be placed on the files of connected cases.

[AVNEESH JHINGAN]
JUDGE

9th November, 2021
pankaj baweja

Whether speaking/reasoned: Yes
Whether reportable: Yes