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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44735-2021
Date of decision : 23.11.2021

Asif Ansari

...Petitioner

Versus

M/s Aman Feed Industries

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Rachna Rudra, Advocate for the petitioner.

(Through Video Conferencing)

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VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of impugned Complaint No.NACT/119/2020 dated 04.03.2020 titled as M/s Aman Feed Industries Vs. Asif Ansari under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as “the Act of 1881”) as also the impugned summoning order dated 03.03.2021 (Annexure P-4), vide the petitioner has been summoned under Section 138 of the Act of 1881.

The respondent had filed a complaint under Section 138 of the Act of 1881 against the present petitioner on the allegation that the complainant was doing the business of selling cattle feed and the petitioner purchased the cattle feed from the complainant on different dates through various bills and the total outstanding amount of Rs.7,88,563/- was due towards the accused/petitioner, for which cheque dated 07.01.2020 amounting to Rs.7,88,563/- drawn on Axis Bank, Branch Aonla, Bareilly, was issued in favour of the complainant from the account of the petitioner bearing No.916020085232981 and when the said cheque was presented, the same was dishonoured with the remarks “Account closed” and after the legal notice was served and reply dated 01.02.2020 was received and the money was not paid in spite of the same, the complaint under Section 138 of the Act of 1881 was filed.

The Judicial Magistrate Ist Class, Khanna, vide order dated 03.03.2021 (Annexure P-4) had passed the impugned order summoning the petitioner in the said complaint under Section 138 of the Act of 1881.

Learned counsel for the petitioner has submitted that in the present case, in fact, the cheque was a security cheque which was given to the agent of the complainant namely Badloom Siddiqui in June, 2017 and the same had been misused by the complainant and the present complaint under Section 138 of the Act of 1881 has been filed on the basis of false averments.

This Court has considered the arguments raised by the learned counsel for the petitioner and has perused the paper book.

The present petition deserves to be dismissed on more than one ground. Firstly, the document which is sought to be relied upon by the learned counsel for the petitioner is a document which does not inspire much confidence. The said document has been annexed as

Annexure P-5 with the present petition. A perusal of the said document would show that the same has not been signed by any person. Although, the cheque as per the averments made in the complaint, is of Axis Bank but in the entire document (Annexure P-5), there is no reference of any bank much less, Axis Bank. It is not even clear as to who has issued the said document. Neither the certified copy nor the original of the same has been produced. Even the amount of the cheque regarding which the payment has been stopped nor the year of the cheque, has been mentioned. Moreover, the petitioner has not even chosen to annex the cheque in question so as to ascertain the date on the said cheque. Reply to the legal notice dated 01.02.2020 which is annexed with the present petition as Annexure P-2, further shows that self-contradictory pleas have been raised in the said reply and at any rate, these are disputed questions of fact which cannot be gone into by this Court under Section 482 of Cr.P.C. A perusal of the said reply (Annexure P-2) would show that even as per the version of the present petitioner, the petitioner had purchased the goods worth Rs.1,33,00,160/- from the complainant and no proof has been annexed with the present petition so as to show that the said amount has been paid by the petitioner. It has been averred that the business transactions between the petitioner and the complainant had started on 14.06.2017 and it has been admitted that the complainant had supplied goods through the agent namely Badloom Siddiqui, for which the payment had already been made and a blank cheque/security cheque was given to the said Badloom Siddiqui. Firstly, there is no proof much less prima facie proof, to show that the payment of the goods, which have admittedly been supplied to the petitioner, has been made and once the payment had been made, as per the version of the petitioner, thereafter no explanation has been given as to why a security cheque/blank cheque was given by the petitioner. Nothing has been annexed alongwith the present petition to even remotely show that as to what action was taken by the petitioner when the said security/blank cheque was not returned. In fact, a perusal of the said reply as well as the petition would show that the petitioner has admitted his signatures on the cheque in question.

The Hon'ble Supreme Court of India in a case titled ***Bir Singh vs. Mukesh Kumar***, reported as ***2019(4) SCC 197***, has held that the Court shall presume the liability of the drawer of the cheques for the amount for which the cheques are drawn and even in the aforesaid case, the cheque was stated to be a post dated cheque/signed blank cheuqe which had been allegedly subsequently filled up by the complainant. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"xxx xxx*
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> *22. In Hiten P. Dalal vs. Bratindranath Banerjee, this Court held that both Section 138 and 139 require that the Court shall presume the liability of the drawer of the cheques for the amounts for which the cheques are drawn. Following the judgment of this Court in State of Madras vs. Vaidyanatha Iyer, AIR 1958 Supreme Court 61, this Court held that it was obligatory on the Court to raise this presumption.*
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> *23. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the*

accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non- existence of the presumed fact as held in Hiten P. Dalal (supra).

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36. The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.

37. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the *amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*

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40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

In the present case, it is not in dispute that the cheque has been duly signed by the petitioner and the same has been issued from the personal account of the petitioner and thus, there is a presumption as per Section 139 in favour of the drawee/complainant. Moreover, in the present case, it is not even prima facie proved that the present cheque was a security cheque but even assuming for the sake of argument, that it was a security cheque then also as per the judgment of Coordinate Bench of this Court in ***Shalini Enterprises Vs. India Bulls Financial Service***, reported as ***2013(2) CCC 835***, the petitioner cannot escape liability on the ground that the cheque in question was a security cheque. The relevant portion of said judgment is reproduced hereinbelow:-

"His additional plea is that the cheque which was presented for encashment was actually a security cheque and hence no liability would arise by dishonour of such a cheque.

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Additional plea of the petitioner that dishonour of a *security cheque can not fasten the liability on the drawer under the Negotiable Instruments Act is also not acceptable. There can be no doubt regarding the fact that the security cheque is an integral part of the commercial process entered into between the Petitioner and Respondent/ Complainant. The security cheque is not only a deterrent for the drawer against dishonoring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the Drawer. It cannot by any stretch be argued that a security cheque is not handed over or issued in pursuance of any undischarged liability. To hold so would defeat the whole purpose of a security cheque. In the considered opinion of the Court, a security cheque is an acknowledgment of liability on the part of the drawer that the cheque holder may use the security cheque as an alternate mode of discharging his/its liability. Thus the argument of the learned counsel for the petitioner that on dishonouring of a security cheque no offence punishable under section 138 of the Negotiable Instruments Act is made out."*

A perusal of the above judgment would show that it has been observed that even if a cheque is a security cheque, the same is an integral part of the commercial process and the same acts as a deterrent for the drawer against dishonouring his financial commitment and can also be used towards discharging the liability of the drawer. It is further held that to hold otherwise, would defeat the whole purpose of a security cheque. No judgment has been cited by the learned counsel for the petitioner to show any contrary view.

At any rate, the plea sought to be raised by the petitioner in the present case is a plea of defence and same can be raised during the trial and the present petition filed under Section 482 of Cr.P.C. for quashing of the complaint and summoning order, on the basis of the said plea of defence based on a document which is neither referred to in the complaint nor a part of the list of document attached with the complaint nor are of unimpeachable character, cannot be entertained. A Coordinate Bench of this Court in judgment titled as ***Som Nath Vs. Mukesh Kumar***, reported as ***2015(8) RCR (Criminal) 599***, has held that the questions which are mixed questions of law and fact cannot be made the basis for quashing of complaint under Section 138 of the Act of 1881 in a petition filed under Section 482 of Cr.P.C. The relevant portion of the judgment of the coordinate Bench in Somnath's case (supra), is reproduced hereinbelow:

> *"6. Complainant in support of his case, led his preliminary evidence and the petitioner has been summoned to face the trial by the Trial court. It is not the case of the petitioner that the cheque in question was not signed/issued by him. The fact that the cheque in question was issued by the petitioner leads to a presumption that there exists a legally enforceable debt or liability. However, the said presumption is rebuttable and the same can be rebutted by the petitioner by leading evidence. At this stage, without there being any evidence on record, it cannot be held that the cheque drawn by the petitioner was in respect of a debt or liability which was not legally enforceable. The plea raised by the petitioner that the cheque in question was issued on account of a time barred debt can be gone into by the Trial Court after the parties*

lead their evidence with regard to their respective pleas. However, at this stage, it would not be just and expedient to quash the criminal proceedings at the very threshold by presuming that the cheque in question had been issued qua a time barred debt. Complainant is yet to lead his evidence in support of his case. In case the complainant fails to establish his case, petitioner will be acquitted by the Trial Court but it would not be in the interest of justice to scuttle the criminal proceedings at the very threshold.

7. Hon'ble Apex Court in 'S. Natarajan versus Sama Dharman 2015(2) R.C.R. (Criminal) 854', has held as under:-

> *7. In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact.*
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> *xx xx xx xx xx*
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> *10. In our opinion, therefore, the High Court could not have quashed the proceedings on the ground that at the time of issuance of cheque, the debt had become time barred and therefore, the complaint was not maintainable. The High Court, therefore, fell into a grave error in quashing the proceedings.*
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> *11. In the result, the impugned order dated 25/7/2012 is set aside. The trial court shall proceed with the case."*

8. In view of the decision of the Apex Court in S.Natarajan's case (supra), the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

9. No ground for interference by this Court is made out."

In view of what has been observed above, the present petition is dismissed.

It will, however, be open to the petitioner to raise all pleas including the pleas raised in the present petition before the trial Court, which would be considered independently of the observations made in this order.

23.11.2021 **(VIKAS BAHL)**

Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**