

CRM-M-17341 of 2022

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17341 of 2022

Date of Decision: 27th April, 2022

PSA Nitrogen Limited

Petitioner

Versus

Satia Industries Ltd.

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Singla, Advocate for the petitioner.

AVNEESH JHINGAN, J (Oral):

This petition under Section 482 Cr.P.C. is filed for quashing of the complaint bearing No. NACT-152-2018, titled as “Satia Industries Ltd. v. PSA Nitrogen Ltd.” and summoning order dated 23.5.2018.

The brief facts necessary for adjudication of the present petition are that the complainant-Satia Industries Ltd. placed a purchase order dated 13.7.2016 with the petitioner-company for design, engineering, supply, supervision of erection and commissioning of oxygen generator set. As per the payment clause, the petitioner had to give a cheque for Rs.37.20 lacs with an undertaking that the respondent can encash the cheque on failure of the petitioner to deliver equipment. The cheque was to be taken back on completion of successful commissioning.

In compliance of the payment clause, admittedly a cheque was issued by the petitioner to the complainant.

The complainant alleged that supply was not completed within time, as many items were not supplied and some of the items supplied were of lower capacity. Cheque No. 001474 for an amount of Rs.37,20,000/- issued by the petitioner was presented for encashment, as the petitioner failed to deliver the required equipment and to complete the commissioning of oxygen plant. The cheque was dishonoured with the remarks “funds insufficient”. After giving notice, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

The trial court perusing the documents adduced in preliminary evidence, *prima facie* observing that case under Section 138 of the Act is made out, summoned the petitioner through authorised representative, hence the present petition.

Learned counsel for the petitioner submits that there was no legally enforceable debt, the security cheque was mis-used. He relies upon the decision of Bombay High Court in **Joseph Vilangadan v. Phenomenal Health Care Services Ltd. and another** 2010(5) AIR Bom. R 554. The contention is that as per payment clause the security cheque could have been presented only on failure of the petitioner to deliver the equipment but the case of the complainant is that the plant is not working properly. Further, it is argued that the cheque was issued several months before the presentation, hence, it was not valid at the time of presentation.

It would be relevant to quote the following decisions of the Supreme Court.

In **Sripati Singh (since deceased) through his son Gaurav Singh v. The State of Jharkhand and another**, SLP (Criminal) No. 252-

253/2020, decided on 28.10.2021, the Supreme Court held as under:

“16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.”

In Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) and another, Criminal Appeal Nos. 694-695 of 2022 decided on 26.4.2022, the Supreme Court held as under:

“13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial

Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

14. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges' bench in State of Haryana v. Bhajan Lal, and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.

“103. 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 FIR 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.”

xx

xx

xx

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality,

so as to altogether disprove the allegations made in the complaint.”

In M/s Womb Laboratories Pvt. Ltd. v. Vijay Ahuja and another, 2019 (4) RCR (Criminal) 358, the Supreme Court held as under:

“In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge or liability arising from such cheques.”

The quashing of the complaint is being sought at pre-trial stage on issuance of summoning order.

It is not disputed that the cheque was issued by the petitioner and it was signed by the authorised representative.

It is settled law that in a complaint under Section 138 of the Act, presumptions under Sections 118 and 139 of the Act are in favour of the holder of the cheque. Presumptions are that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability.

There is no quarrel on the proposition that presumptions are rebuttable, but the contentions raised by learned counsel for the petitioner are the defence available to the petitioner during trial.

It would not be appropriate at this stage to deal with in detail, the contention raised by learned counsel for the petitioner relying upon the payment clause of the purchase order, as it would influence the trial. Suffice to say that the cheque was issued by the petitioner to the complainant for ensuring timely delivery of the equipment and the cheque was to be returned on successful commissioning of the plant. As per the pleadings in the complaint, the petitioner failed to complete the supply in time and the items supplied were of lower capacity.

The Supreme Court in Sripati Singh (since deceased) through his son Gaurav Singh's case (supra) held that on failure to repay the loan, the cheque issued for security would mature for presentation and after dishonour the consequences as per Section 138 and other provisions of the Act would flow.

Section 138 of the Act is widely worded, it includes debt and other liability. In the present case, it would be a disputed question of fact as to whether the cheque was presented on violation terms and conditions of the purchase order or not. The argument that the cheque was not valid on the day of presentation as it was presented after three months of its issuance, *prima facie* appears contrary to the record. The cheque dated 31.12.2017 on presentation was returned by the bank vide memo dated 2.1.2018. The validity period of cheque is directly relatable to the date filled on it.

It is trite law that power of quashing is to be used in rarest of rare cases. The Supreme Court in Rathish Babu Unnikrishnan's case (supra) held that the courts should be conscious while quashing the complaint at pre- trial stage when there is a factual dispute and more so as the legal presumption is in favour of the holder of the cheque.

Learned counsel for the petitioner relied upon the decision of Bombay High Court in **Joseph Vilangadan** (supra) to contend that in case a cheque is issued for a security deposit, no case is made out under Section 138 of the Act. The Bombay High Court relied upon the decision of the Supreme Court in M. S. Narayana Menon @ Mani v. State of Kerala and another, (2006) 6 SCC 39.

Before proceeding further, it would be appropriate to quote the relevant paragraph of the Supreme Court in M. S. Narayana Menon's case (supra):

“We in the facts and circumstances of this case need not go into the question as to whether even if the prosecution fails to prove that a large portion of the amount claimed to be a part of debt was not owing and due to the complainant by the accused and only because he has issued a cheque for a higher amount, he would be convicted if it is held that existence of debt in respect of large part of the said amount has not been proved. The Appellant clearly said that nothing is due and the cheque was issued by way of security. The said defence has been accepted as probable. If the defence is acceptable as probable the cheque therefor cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act.”

On the basis of this paragraph of the Supreme Court, Bombay High Court proceeded that it was held if a cheque is issued for security deposit and not towards discharge of any debt or other liability, case under Section 138 of the Act is not made out and the petition was allowed.

The Supreme Court in **M. S. Narayana Menon's** case (supra) was not dealing with the issue:- Whether the cheque issued for security would come within the ambit of Section 138 of the Act. The Supreme Court on the facts of the case held that the defence taken by the accused that nothing was due was accepted as probable defence in trial and thereafter complainant failed to prove his case. Consequently, it was concluded that if the defence is accepted, the cheque cannot be held to have been issued for discharge of the debt and thereafter the illustration was given. A judgment is not to be read as statute. No legal proposition was laid in **M.S. Narayana Menon's** case (supra) that the complaint under Section 138 of the Act will not lie if the cheque issued for security is dishonoured.

The Supreme Court in **M/s Womb Laboratories Pvt. Ltd.'s** case (supra) held that it would be a defence for the accused that the cheque was given by way of security and not for discharge of any debt or liability. The defence will have to be proved and it would be a triable issue.

In other words, the contention that the cheque was issued for security does not provide an armour to scuttle the complaint under Section 138 of the Act at the threshold. The contention would be based upon the facts and circumstances to be gone into in trial.

The complaint is at the initial stage, there are disputed questions of facts, the grounds raised for quashing would be defence

available to the petitioner. No case is made out for quashing of the complaint..

The petition is dismissed.

[AVNEESHJHINGAN]
JUDGE

27th April, 2022
mk

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |