

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

**CRM-M No.40536 of 2022
Date of decision : 12.09.2022**

Karamjit Kaur

....Petitioner

Versus

Ravinder Pal Singh proprietor M/s Dashmesh Plate Yard

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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

PANKAJ JAIN, J. (ORAL)

By way of present petition filed u/s 482 Cr.P.C., the petitioner seeks quashing of the Complaint No.COMA/9034/2021 dated 6th of May, 2021 titled as 'Ravinder Pal Singh vs. Karamjeet Kaur' (Annexure P-1) and the Summoning Order dated 12th of July, 2021 (Annexure P-11).

2. The petitioner vide impugned order has been summoned to face trial in a complaint case registered for offence punishable u/s 138 of the Negotiable Instruments Act, 1881.

3. Ld. Counsel for the petitioner submits while referring to Para No.1 that the positive case asserted by the complainant in the complaint case is that the money so paid to the petitioner was withdrawn from the Current Accounts of the Company and the Savings Account of the complainant. However, while leading pre-summoning

evidence, no such evidence has come on record. He refers to the Summoning Order dated 12th of July, 2021 (Annexure P-11) to submit that the complaint was not supported by cogent evidence and, thus, summoning order ought not have been passed. In support of the argument, he relies upon the law laid down by Apex Court in **Criminal Appeal No.1019 of 1997** titled as '**M/s Pepsi Foods Ltd. and another vs. Special Judge Magistrate and others**' decided on 4th of November, 1997, to contend that summoning of a person in a criminal proceedings is a serious matter and, thus, the same cannot be taken casually and the Court was required to apply its mind.

4. The other limb of the argument raised by the Counsel for the petitioner is that in fact families of the parties are embroiled in protracted litigation. So much so, father of the petitioner has been sentenced for offence punishable u/s 138 of the N.I. Act. on the complaint filed by the complainant vide order dated 21st of April, 2017 and, thus, there can't be any occasion for the complainant to extend amount that too Rs.20.00 lacs to the petitioner in June/July 2020. He also submits that the petitioner has even filed Civil Suit seeking declaration that the cheques in possession of the complainant cannot be utilized by him as there is no legally enforceable debt and has prayed for return of the cheques. The aforesaid Civil Suit is still pending

before the Competent Court of law.

5. I have heard Ld. Counsel for the petitioner and have gone through the record of the case.

6. There can't be quarrel with the proposition of the law laid down by the Apex Court in **Pepsi Foods Ltd.'s** case (supra). However, the fact remains that the petitioner cannot deny that the cheques have been drawn on his account and the same bear the signatures of the complainant. Thus, at the stage of summoning, the Trial Court was bound by the statutory presumption as contemplated under Section 118 and 139 of the N.I. Act. So far as pleas raised by the petitioner are concerned, the same may constitute valid defence which need to prove by leading cogent evidence before the Trial Court and the same may lead to rebuttal of such presumption. At this stage, i.e., the stage of summoning the aforesaid defence cannot be looked into and that too while exercising jurisdiction u/s 482 Cr.P.C. No finding on fact can be recorded on disputed questions while exercising jurisdiction under Section 482 Cr.P.C. at this stage.

7. Consequently, the present petition is found to be without merit and the same is dismissed.

September 12, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No