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

CRM-M-2230-2023
Decided on : 16.01.2023

Ram Kumar Panwar

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kamal Chaudhary, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Section 482 Cr.PC for quashing of complaint No.NACT/388/2021 dated 08.07.2021 (Annexure P-1) and summoning order dated 03.12.2021 (Annexure P-2) passed by JMIC, Narnaul vide which petitioner was summoned to face trial under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as 'N.I.Act').

Learned counsel for the petitioner submits that the complaint in question has been instituted by respondent No.2 after concealing material facts and hence, on this ground alone the complaint in question deserves to be quashed. Learned counsel further submits that subsequent to the issuance of cheques bearing No.847243 and 847244 dated 18.03.2021, the petitioner had returned a sum of Rs.8,85,000/- in cash to respondent No.2 on 02.02.2021 in part discharge of his liability and now only Rs.65,000/- remained outstanding towards him out of the total amount of Rs.9,50,000/-.

Learned counsel still further submits that respondent No.2 instead of returning the aforesaid bank cheques to the petitioner, had misused cheque No.847244 dated 18.03.2021. Learned counsel has vehemently urged that since the petitioner had made part payment of his debt, it was incumbent upon respondent No.2 to make an endorsement on the cheque so that the same could have been negotiated for the balance amount, however, respondent No.2 had failed to do so. It is thus, argued that it was evidently a clear case of violation of Section 56 of N.I.Act and resultantly, the impugned complaint as well as summoning order could not be sustained and deserved to be quashed. Learned counsel has still further asserted that the complaint (Annexure P-1) had been instituted beyond the mandatory period of 30 days, therefore, it was barred by limitation and it could not be allowed to proceed any further. In support of his submissions, learned counsel has placed reliance on the judgment of Delhi High Court in ***M/s Alliance Infrastructure Project Pvt. Ltd. and others vs. Vinay Mittal, 2010(3) Crimes 781.***

Heard learned counsel and perused the relevant material on record.

It would be relevant to point out here that the powers under Section 482 Cr.PC to quash a FIR or a complaint, as the case may be, should be exercised sparingly and with a great deal of circumspection. If on a perusal of the allegations levelled in the FIR or a complaint, a *prima facie* case is made out, it would not be proper to stifle the prosecution at the threshold. It needs to be reiterated that this Court while exercising its inherent powers under Section 482 Cr.PC cannot be expected to delve into

truthfulness or otherwise of the allegations levelled in the FIR or in the complaint.

Adverting to the case in hand, though learned counsel for the petitioner has submitted that a payment of Rs.8,85,000/- stood made to the complainant, however, this fact would be ascertained only during trial on the basis of evidence led as to whether such payment had been made or not.

Coming to the next ground, which has been urged by learned counsel qua the complaint having been filed beyond the period of limitation, it needs to be observed that in the entire petition, neither the petitioner has mentioned the date when the demand notice was received by him nor has he annexed a copy of the said demand notice. Therefore, this Court cannot quash the complaint (Annexure P-1) and the summoning order (Annexure P-2) merely on the basis of the bald submissions and averments made by the petitioner.

Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan vs. The State (Govt. of NCT of Delhi) and another*** decided on 26.04.2022 has observed as under:

“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.

17. The consequences of scuttling the criminal

process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

The case law relied upon by the petitioner would not apply to the facts of the present case as in that case the complainant in his cross-examination had admitted receipt of a sum of Rs.16.50 lakhs in part discharge of his liability, which is not so in the present case. Moreover, at the cost of repetition since the case in hand is still at a nascent stage wherein receipt of the money was yet to be proved, it would be best left to the trial Court to appreciate the evidence led by the respective parties and thereafter, decide the complaint in question.

In the facts and circumstances as discussed hereinabove, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.PC to quash the complaint in question as well as summoning order (Annexure P-2) passed by trial Court.

Accordingly, the petition being devoid of any merit stands dismissed.

16.01.2023
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No