

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

Sr. No.

CRM-M-44937-2018 (O&M)

Date of decision : 11.01.2023

M/s Saroj Construction Trading Nawada and another

.....Petitioner(s)

Versus

Mohindra Engineering Works and others

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Ms.Nisha Rana, Advocate for the petitioner(s)

Mr.Deepak Aggarwal, Advocate for respondent Nos. 1 and 2

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed for quashing of complaint bearing COMA/731/2017 dated 21.10.2017, titled as “Mohindra Engineering Works and others vs. M/s Saroj Construction Trading Nawada and another and also summoning order dated 07.03.2018.

Briefly put, the facts of the case are that the petitioner-accused had been purchasing the combine harvesters and its parts from the respondent-company on different dates w.e.f. 12.11.2014. On 03.11.2016, the petitioner had purchased the machine for a total sum of Rs.16,42,000/-, out of which Rs.10,50,000/- was paid by him but the remaining payment was still pending. But due to non payment of the outstanding amount, the machine was not delivered. Apart from it, there was also another outstanding amount of Rs.11,04,668/-, for which, the accused-petitioner had issued a cheque bearing No.000326 dated 07.07.2017 of Rs.3,19,900/-, as a part payment, which on presentation for encashment by the respondent-company got dishonoured with remarks “payment stopped by drawer” vide memo dated 19.08.2017. Based on the same, the complaint in question was

filed against the petitioner under Section 138 of NI Act read with Section 420 IPC and summoning order was passed on 07.03.2018.

Learned counsel for the petitioner contends that there was a business deal between the parties pertaining to purchase of harvesting combines. The petitioners have already made all the payments but due to some differences, the complainant-company had now used one of the security cheques given to it at the time of nomination as a dealer. The respondent had hatched a conspiracy against the petitioner by presenting the cheque in question, despite the fact that a request had already been sent by the petitioner to the Bank for stopping the payment against the said cheque.

On the other hand, learned counsel for the respondents opposes the prayer on the ground that the petitioner has been declared an absconder by the learned trial Court vide order dated 03.01.2023, and proceedings under Section 83 Cr.P.C. have been initiated against him.

Heard.

Hon'ble The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora**, (2013) 10 SCC 581 has held that, "It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

Hon'ble The Supreme Court of India in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and others** Criminal Appeal No. 330 of 2021, decided on 13.04.2021, has held thus:

“23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

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iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy

facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

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xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR. Xx xx”

In the case of **Ramveer Upadhyay and Another vs. State of U.P. and Another** 2022 SCC OnLine SC 484, Hon'ble The Supreme Court of India has held that, “In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without

further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

Reverting to the facts of the present case, the complaint has not only been filed under Section 138 of NI Act but also under Section 420 IPC, wherein the learned trial Court has passed the summoning order. It is apparent that there are disputed questions of fact involved in the case, as to whether the cheque in question issued by the petitioner was by way of security or otherwise, which is a matter of trial and the same cannot be gone into by this Court in the present proceedings. Furthermore, petitioner No.2, who is the proprietor of petitioner No.1-Firm, has been declared as an absconder vide order dated 03.01.2023 passed by the learned trial Court and an intimation has been sent to the SHO concerned to initiate proceedings against him under Section 174-A IPC, as also a direction has been issued for filing a list of property of the accused, for taking out proceedings under Section 83 Cr.P.C. against him.

As regards the implication of proclamation having been issued against the petitioner is concerned, indubitably any person, who is declared as an 'absconder' and is evading the proceedings, thereby stands directly at conflict with law, ordinarily, would deserve no concession or indulgence.

Still further, quashing of the complaint at a pre-trial stage would prejudice the complainant, a view finding strength from the observations of Hon'ble The Supreme Court in the case of **Rathish Babu Unnikrishnan vs. The State (Govt. of NCT of Delhi) & anr**, SLP(Crl) Nos.5781-5782 of 2020 wherein it was held that, “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. 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.”

In view of the above, this Court is not inclined to interfere with the impugned order by invoking the powers under Section 482 Cr.P.C., which as per the exposition of law, have to be exercised sparingly and with circumspection, that too in rarest of rare cases, which the present case does not fall under. Accordingly, the present petition being devoid of merit is hereby dismissed.

11.01.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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