

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

CRM-M-24133-2019
Date of Decision:- 6.7.2023

Rajesh Kumar

... Petitioner

Versus

Ranbir Singh Rana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Rajesh Bansal, Advocate
for the petitioner.

None for respondent No.2.

KARAMJIT SINGH, J.

1. The instant petition has been filed by the petitioner/accused under Section 482 Cr.P.C. seeking quashing of criminal complaint No.14 /2017 dated 15.2.2017 / 10.4.2018 Ranbir Singh Rana vs. Rajesh Kumar under Sections 138 of Negotiable Instruments Act (in short 'NI Act') pending in the Court of learned Judicial Magistrate Ist Class, Assandh District Karnal (Annexure P-1) and all the consequential proceedings arising therefrom including summoning order dated 30.5.2017 (Annexure P-2).

2. The further proceedings against the petitioner were stayed vide order dated 24.5.2019 whereby notice of motion was issued to the respondents. In response to the said notice, complainant/respondent No.1 put in appearance through his counsel, while respondent No.2 was represented by the State counsel and reply was filed on behalf of the State.
3. After COVID-19 pandemic was over, when the case was fixed for regular hearing, none has put in appearance on behalf of respondent No.1.
4. The brief facts of the case are that complainant/respondent No.1 filed criminal complaint under Section 138 of NI Act against the petitioner wherein it was alleged that the complainant along with 4 other persons took land comprised in Khasra No.4676 ad-measuring 12236 square yards situated in Karnal on lease of Rs.16,500/- from Haryana Wakf Board vide lease deed dated 30.6.2011. Thereafter the present petitioner and one Anil Kumar took the said land further on lease for a sum of Rs.13,09,000/- from the complainant against affidavit dated 21.6.2016. The present petitioner paid sum of Rs.1,99,000/- in cash and for the balance payment of Rs.11,10,000/-, petitioner issued three cheques i.e. cheque No.009984 dated 20.11.2016 amounting to Rs.5.5 lac; cheque No.009985 dated 20.11.2016 worth Rs.5.5 lac; and cheque No.009986 dated 20.11.2016 amounting to Rs.10,000/- and all the said cheques were drawn on Union Bank of India branch Panipat in the name of complainant. On presentation the said cheques were returned to the complainant with remarks '**payment stopped by**

drawer' vide memo dated 28.11.2016. Thereafter statutory notice under Section 138 of NI Act was issued but the petitioner failed to make the payment of cheque amount and then the impugned criminal complaint was filed by respondent No.1 against the petitioner in the Court concerned.

5. On conclusion of the preliminary evidence the learned trial Court passed order (Annexure P-2) with direction to summon the petitioner to face trial under Section 138 NI Act.
6. Being aggrieved, the petitioner has filed the present petition.
7. The counsel for the petitioner has assailed the complaint (Annexure P-1) and summoning order (Annexure P-2) *inter alia* on the ground that the impugned complaint is not maintainable as the same is relating to time barred debt and further the cheques in question were not issued for discharge of any legally enforceable liability.
8. The counsel for the petitioner has contended that respondent No.1 and some other persons took land in question on lease from Haryana Wakf Board vide lease deed dated 30.6.2011 (Annexure P-4) and respondent No.1 while posing himself to be the owner of the said land further transferred/leased the same to the petitioner vide affidavit (Annexure P-5), in violation of the terms and conditions of lease deed (Annexure P-4) which was executed by the respondent No.1 with Haryana Wakf Board as per which respondent No.1 was having no right to sub-lease the property in question to anyone else. The counsel for the petitioner has further submitted that the property in question is a graveyard and

nature of the said property could not be changed by the lessee. That the aforesaid facts were not brought to the notice of the petitioner when the property in question was sub-leased to him by respondent No.1. It has been further contended that in the meantime the petitioner issued cheques in question to respondent No.1 with regard to agreement of sub-lease. The counsel for the petitioner has further argued that when the petitioner came to know the true facts regarding the nature of the property in question and the fact that it could not be used for non-Islamic purpose and further that respondent No.1 was having no right to dispose of the property in question, the petitioner immediately asked his banker to stop the payment of cheques in question. The counsel for the petitioner has further contended that in the given circumstances as the cheques in question were issued in lieu of the liability which was not legally enforceable and was even otherwise time barred, the impugned complaint is not maintainable and resultantly all the subsequent proceedings are also liable to be quashed. In support of his contentions, the counsel for the petitioner has placed reliance upon *Girdhari Lal Rathee vs. P.T.V. Ramanujachari* 2000(2) R.C.R. (Criminal) 50 (Andhra Pradesh High Court); *M/s Vijay Polymers Pvt. Ltd. & Anr. Vs. M/s Vinnay Aggarwal*, 2010(5) R.C.R.(Criminal) 728 (Delhi High Court) and *Prajan Kumar Jain vs. Ravi Malhotra*, 2009(21) R.C.R (Criminal) 141 (Delhi High Court).

9. I have considered the submissions made by the counsel for the petitioner.

10. The present petition has been filed by the petitioner challenging the complaint (Annexure P-1) filed by respondent No.1 against him under Section 138 of NI Act. One could easily imagine that petitioner entered into alleged transaction with regard to land belonging to Wakf Board, with open eyes. Further the petitioner has not denied his signatures on cheques in question. Once the execution of cheque is admitted, Section 139 of NI Act mandates a presumption that the cheque was for the discharge of any debt or other liability. Presumption provided under Section 139 of NI Act is applicable to the instant case. Section 139 of NI Act reads as follows:-

Section 139 in The Negotiable Instruments Act, 1881

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

11. The Hon'ble Supreme Court in ***Ramgappa vs. Mohan, AIR 2010 (SC)1898*** held that existence of legally recoverable debt or liability is a matter of presumption under Section 139 of NI Act. The said presumption can be rebutted by adducing cogent evidence by the person who wants to rebut the said presumption.
12. Further in ***Criminal Appeals No.1990, 10500 and 10501 of 2013, Raja Ram (since deceased) through LRs vs. Maruthachalam (since deceased) through LRs*** decided on **18.1.2023**, it was held by the Hon'ble Supreme Court that unless cogent evidence is led by the accused in his defence, the presumption under Section 139 of NI Act cannot be rebutted.

13. In view of the above, it is settled position that the onus is upon the accused to establish that the cheques in question were not issued in discharge of any legally enforceable liability.
14. Further, it is settled position of law that power under Section 482 Cr.P.C. cannot be exercised where the allegations are required to be proved in Court of law and all issues involve disputed questions of facts and law and cannot be decided unless and until parties go to trial and lead their respective evidence. In this context reliance is placed on the decision of Hon'ble Apex Court in ***Criminal Appeal No.471/2015*** decided on ***19.3.2015, HMT Watches Ltd. vs. MA Abida and Another***, wherein cheques issued by the accused persons on their presentation were dishonoured by the banker with the endorsement, **'payment stopped by the drawer'** and the accused took plea that the said cheques were given as a security and the Hon'ble Apex Court while allowing the appeal filed by the complainant held that the High Court has committed error of law in quashing the criminal complaints filed by the appellant in respect of offence punishable under Section 138 of NI Act in exercise of powers under Section 482 Cr.P.C. by accepting factual defences of the accused which were disputed ones. Such defences, if taken before the trial Court, after recording of the evidence, can be better appreciated.
15. Recently the Hon'ble Apex Court in ***Criminal Appeals No.1760-1761-2022*** decided on ***10.10.2022 Yogesh Jain vs. Sumesh Chadha*** held that once a cheque is issued and upon getting dishonoured, a statutory notice is issued, it is for the accused to dislodge the legal

presumption available under Sections 118 and 139 NI Act and whether the cheque in question had been issued against a time barred debt or not, is a matter of evidence and could not be adjudicated in a petition filed by the accused under Section 482 Cr.P.C.

16. In the light of the aforesaid settled position of law, this Court has got no jurisdiction under Section 482 Cr.P.C. to adjudicate that the cheques in question were issued in discharge of time barred debt or in discharge of liability which was not legally enforceable.
17. For the reasons stated above, the present petition is hereby dismissed being devoid of merits and the petitioner is directed to appear before the learned trial Court on the date already fixed in the said Court. However, it is made clear that observations made hereinabove, are not to be construed as an expression of opinion on the merits of the main complaint case, which is pending before the learned trial Court.

6.7.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No