

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

113+202.

CRM-M No.36565 of 2019 (O&M)

Reserved on:21.11.2023

Pronounced on:05.12.2023

Balkour Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Judgepreet Singh Warring, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

Mr. Jagdeep Singh Rana, Advocate
for respondent No.2.

Mr. Rohit Aggarwal, Advocate for
Mr. Mehak Sawhney, Advocate
for respondent No.3.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court praying for setting aside the impugned summoning order dated 11.04.2019 (Annexure P-4) passed by the Court of learned Judicial Magistrate 1st Class, Abohar along with complaint bearing No.NACT-204 of 2019 dated 17.02.2019 titled as *Amardeep Singh Vs. Balkour Singh*.

2. In brief the facts are that respondent No.2-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) against the petitioner alleging therein that the petitioner had borrowed an amount of ₹9 lakhs from respondent No.2-complainant with a promise to repay the same. When respondent No.2-complainant demanded the said amount, the petitioner issued a cheque bearing

No.021925 dated 17.12.2018 for an amount of ₹9 lakhs drawn on State Bank of Bikaner and Jaipur (now merged in State Bank of India, Branch Bhagat Singh Chowk, Abohar) in favour of the respondent No.2-complainant with an assurance that the same will be encashed on presentation. However, on presentation of the said cheque by respondent No.2-complainant in his bank account, the same was dishonoured vide return memo dated 18.12.2018 with remarks 'account closed'. The respondent No.2 complainant had sent legal notice dated 27.12.2018 to the petitioner asking him to liquidate the cheque amount but he did not make the payment within the stipulated period prescribed in the notice and thus, the complaint in question was filed.

3. The respondent No.2-complainant led the preliminary evidence and the learned trial Court being convinced that a *prima facie* case was made out against the petitioner under Section 138 of the NI Act, summoned the petitioner vide impugned order dated 11.04.2019.

4. Learned counsel for the petitioner submitted that the petitioner used to sell his crops to respondent No.3 for which he kept some cheques of the petitioner with him for withdrawal of the cash in lieu of sale of crops of other farmers, which respondent No.3 used to sell in the name of the petitioner. Later on, the petitioner stopped his dealings with respondent No.3 and being disgruntled by the said fact, respondent No.3 in connivance with respondent No.2 misused the cheque kept by him and presented the same in the bank account of respondent No.2 for encashment. It is further contended that the said respondents procured an illegal return memo dated 18.12.2018 with remarks 'account closed'.

5. Learned counsel for the petitioner argued that the complaint filed by respondent No.2-complainant is not maintainable as the cheque in question was not a valid tender and therefore, impugned order dated 11.04.2019 summoning

the petitioner is liable to be set aside. To corroborate his contention, counsel for the petitioner refers to guidelines dated 02.05.2018 issued by the Reserve Bank of India that cheques issued by the State Bank of Bikaner & Jaipur were valid as negotiable instrument upto 30.06.2018 and beyond the said date, cheque issued by the said Bank would not be entertained by any other bank. Further reliance was placed upon the information obtained under the Right to Information Act, 2005 wherein it was replied that earlier cheques issued by the State Bank of Bikaner and Jaipur after its merger with the State Bank of India were not entertained by any other bank in the month of December, 2018. It is also argued that since cheques of the State Bank of Bikaner and Jaipur were not valid tender after 30.06.2018 on its merger with State Bank of India, the return memo dated 18.12.2018 obtained by respondent No.2 was forged and fabricated.

6. Per contra, learned counsel appearing for respondents No.2 and 3 argued that the trial Court based on the preliminary evidence given by the complainant came to the conclusion that a *prima facie* case is made out against the petitioner and therefore, he was rightly summoned and the impugned order does not warrant any interference.

7. I have heard learned counsel for the parties and have perused the paper book with their able assistance.

8. Section 138 of the NI Act deals with dishonour of cheques and to make out a *prima facie* against the accused, the complainant has to fulfill the ingredients of Section 138 of the NI Act, which are as follows:-

- (i) The drawing of a cheque by person on an account maintained by him with the banker for the payment of any amount of money to another from that account;

- (ii) The cheque being drawn for the discharge in whole or in part of any debt or other liability;
- (iii) Presentation of the cheque to the bank arranged to be paid from that account;
- (iv) The return of the cheque by the drawee bank as unpaid either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount;
- (v) A notice by the payee or the holder in due course making a demand for the payment of the amount to the drawer of the cheque within 30 days of the receipt of information from the bank in regard to the return of the cheque; and
- (vi) The drawer of the cheque failing to make payment of the amount of money to the payee or the holder in due course within 15 days of the receipt of the notice.

9. As soon as the complainant discharges the burden to prove that the instrument (cheque/promissory note) was executed by the accused, the rules of presumptions under Sections 118 and 139 of the N.I. Act help the complainant and shift the burden on the accused. The presumptions so raised in favour of the complainant will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. In the present case, admittedly, the respondent No.2-complainant has fulfilled the ingredients of Section 138 of the NI Act to create presumptions as enunciated under Sections 118 and 139 of the NI Act in his favour and therefore, the burden to rebut the same shifts on the petitioner-accused. A three Judge Bench of the Hon'ble Supreme Court in ***Dashrath***

Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 speaking through

Justice Vikramjit Sen has observed as under:-

36. Section 138 is a penal provision that prescribes imprisonment up to two years and fine up to twice the cheque amount. It must, therefore, be interpreted strictly, for it is one of the accepted rules of interpretation that in a penal statute, the courts would hesitate to ascribe a meaning, broader than what the phrase would ordinarily bear. Section 138 is in two parts. The enacting part of the provision makes it abundantly clear that what constitutes an offence punishable with imprisonment and/or fine is the dishonour of a cheque for insufficiency of funds, etc. in the account maintained by the drawer with a bank for discharge of a debt or other liability whether in full or part. The language used in the provision is unambiguous and the ingredients of the offence clearly discernible viz. (a) cheque is drawn by the accused on an account maintained by him with a banker, (b) the cheque amount is in discharge of a debt or liability, and (c) the cheque is returned unpaid for insufficiency of funds or that the amount exceeds the arrangement made with the bank. But for the proviso that comprises the second part of the provision, any dishonour falling within the four corners of the enacting provision would be punishable without much ado. The proviso, however, draws an exception to the generality of the enacting part of the provision by stipulating two steps that ought to be taken by the complainant holder of the cheque before the failure of the drawer gives to the former the cause of action to file a complaint and the competent court to take cognizance of the offence. These steps are distinct from the ingredients of the offence which the enacting provision creates and makes punishable.....”

10. The argument raised by the petitioner before this Court is that he used to sell his crops to respondent No.3, who kept some of his cheques with him for withdrawal of cash and later on, in connivance with respondent No.2 misused the said cheques. It is not the case of the petitioner that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the petitioner

that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence qua exercise of undue influence or coercion.

11. Another argument raised by the counsel for the petitioner that the return memo dated 18.12.2018 with remarks 'account closed' was obtained by the respondent No.2 in an illegal and unjust manner, as the cheque issued was of the State Bank of Bikaner and Jaipur, which bank was merged with State Bank of India and on such merger, the cheques issued by the erstwhile State Bank of Bikaner and Jaipur were declared invalid by the Reserve Bank of India w.e.f. 30.06.2018. The dishonour of cheque with remarks 'account closed' would certainly be an offence under Section 138 of the NI Act as has been held by the Hon'ble Supreme Court in ***NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253***. Further, invalidation of the cheque on account of merger with another bank would be a disputed question of fact and would be a probable defence that the petitioner is free to take before the trial Court. This Court cannot negate the complainant's case without allowing the complainant to lead evidence while exercising its discretionary power under Section 482 Cr.P.C. Furthermore, it is also a disputed question of fact whether the respondent No.3 kept the cheque of the petitioner with him or the petitioner himself gave the alleged invalid cheque, which was dishonoured on presentation by respondent No.2. Therefore, at this nascent/pre-trial stage, this Court cannot delve upon the disputed question of fact under Section 482 Cr.P.C., without giving an opportunity to the respondent No.2-complainant to lead evidence in rebuttal. A two Judge Bench of the Hon'ble Supreme Court in ***In Suryalakshmi Cotton Mills Ltd. v. Rajvir***

Industries Ltd. (2008) 13 SCC 678 speaking through Justice S.B. Sinha has held as under:-

“17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.

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22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

12. The issue whether summons and trial notice should have been quashed on the basis of factual defences and as a corollary therefrom, what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage, has been answered by a two Judge Bench of the Hon’ble Supreme Court in **Rathish Babu Unnikrishnan Versus**

State (Govt. of NCT of Delhi) and another 2022 SCC OnLine SC 513 while speaking through Justice Hrishikesh Roy, in the following terms:-

“11. The legal presumption of the cheque having been issued in the discharge of liability must also receive due weightage. In a situation where the accused moves Court for quashing even before trial has commenced, the Court's approach should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The opinion of Justice K.G. Balakrishnan for a three judges Bench in Rangappa v. Sri Mohan would at this stage, deserve our attention:—

“26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

12. At any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence. On this aspect, we may benefit by referring to the ratio in Rajeshbhai Muljibhai Patel v. State of Gujarat where the following pertinent opinion was given by Justice R. Banumathi:—

“22.When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act.”

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.

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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.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court.

Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

13. In view of the aforesaid facts and circumstances, this Court does not find the instant case fit to exercise its discretionary power for quashing the impugned summoning order dated 11.04.2019 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Abohar and the same is upheld. Consequently, the instant petition is dismissed. Needless to say, the petitioner will be at liberty to raise all pleas raised in the present petition before the trial Court at appropriate stage and observations made by this Court shall not be construed to be an expression on merits of the case. The trial Court shall consider the evidence led by both the parties uninfluenced by the observations made by this Court and complete the trial and pronounce the judgment as expeditiously as possible and preferably within a period of six months from today, keeping in view the fact that the complaint was filed in the year 2019.

(HARPREET SINGH BRAR)
JUDGE

December 05, 2023

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No