IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

115 **CRM M-44856 of 2023**
Date of Decision: 11.09.2023

Subash Chander ...Petitioner

Versus

M/s Geeta Associate ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Mohan Sharma, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the summoning order dated 24.03.2021 (Annexure P-1) passed by the JMIC Phillaur passed in Complaint No. NACT/267 of 2020 titled as **"M/s Geeta Associates Vs. M/s Gaurav Agency"** and all subsequent proceedings arising therefrom.

2. As per the respondent/complainant, he was running the business under the name and style M/s Geeta Associates (Home King) and was doing the business of manufacturing and resale of spices, grocery items, bakery goods and confectionery goods etc. As per the ledger maintained by the respondent, the outstanding balance against the petitioner/accused was Rs. 2,69,365/- till 31.03.2019 plus interest. When the respondent/complainant demanded the amount from the accused/petitioner, he issued a post dated cheque bearing no. 016641 for an amount of Rs. 2,69,365/-. The cheque was only for

presentation, however, it was returned dishonoured with the memo having reason "payment stopped by the drawer". A statutory legal notice dated 22.09.2020 was issued to the petitioner through registered post, still the petitioner did not pay the amount equal to the cheque amount to the respondent. Ultimately, the present complaint (Annexure P-6) was filed by the respondent against the petitioner.

3. Learned counsel for the petitioner contends that the petitioner is the proprietor of M/s Gaurav Agency, House No. 260, Residential Colony No.1, Amroha (U.P.) and the super stockiest distributor of the respondent. As per him, the respondent/complainant had entered into an agreement with the petitioner regarding the business of spices and as per the terms and conditions (Annexure P-4), an undated security cheque bearing No. 016641 was given to the respondent. One more cheque No. 016442 of Rs. 1 lac was given for payment for ordered spices. After that, the respondent had sent the spices packets to the petitioner. However, the goods received by the petitioner had already expired. The petitioner made many complaints to the official of the respondent/company, but they did not care about it. Lastly, on 17.03.2018, the petitioner stopped the payment of security cheque after visiting to his bank. Thereafter, the respondent and its employees had threatened the present petitioner. Thus, the complaint was filed by the respondent by concealing the material facts from the Court and the complaint and the impugned order were liable to be set-aside.

3. I have heard the learned counsel for the petitioner and perused the record.

4. First of all, the present petition has been filed by the present petitioner on 04.09.2023 for setting aside the summoning order dated 24.03.2021 (Annexure P-1). Thus, it is apparent that the present petition has been filed by the present petitioner after a delay of about 2 ½ years of passing of the summoning order by the trial Court. In the entire petition, the petitioner has not explained any reasons in presenting the present petition before this Court for such a long delay. Apart from that, the petitioner has raised several disputed questions of fact in the present petition, which can never be adjudicated by this Court while exercising its jurisdiction under Section 482 Cr.P.C. The petitioner has alleged in the petition that he was working as a super stockiest distributor of the respondent/complainant. Even, certain spices packets were supplied by the respondent to the petitioner, however, the product had already expired before delivery to the petitioner. Consequently, the petitioner had stopped the payment of the security cheque. In fact, the petitioner has raised these disputed questions of fact and have to be proved by the petitioner before the trial Court by leading evidence in this regard. Such facts can never be adjudicated by this Court in a petition filed by him under Section 482 Cr.P.C.

5. Apart from that, the petitioner has alleged that the cheque was given as a security cheque to the respondent and on the dishonor

of the cheque, the complaint under Section 138 of the Negotiable Instruments Act 1881 would not be maintainable. In fact, the Hon'ble Supreme Court has held in the matter of **Sripati Singh (since deceased) through His son Gaurav Singh Vs. The State of Jharkhand & Another 2021(4) R.C.R. (Criminal) 620 and 2021 AIR (Supreme Court) 5732** as follows:-

> *16. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.*

6. In view of the above discussion, it can be safely concluded that the cheque was given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any other

liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved that such security could not be treated as a debt or other liability of the accused and that would be triable issue.

7. Consequently, there is no merit in the present petition and the same is ordered to be dismissed.

11.09.2023 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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