

CRM-M-43846-2019(O & M)

241-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 20.12.2023

1. CRM-M-43846-2019(O & M)

M/S SHRI ENTERPRISES AND OTHERS
...PETITIONERS
V/S

M/S DIMPLE CINEPLEX
...RESPONDENT

2. CRM-M-53739-2019(O & M)

M/S SHRI ENTERPRISES AND OTHERS
...PETITIONERS
V/S

M/S DIMPLE CINEPLEX
...RESPONDENT

3. CRM-M-53764-2019(O & M)

M/S SHRI ENTERPRISES AND OTHERS
...PETITIONERS
V/S

M/S DIMPLE CINEPLEX
...RESPONDENT

4. CRM-M-53795-2019(O & M)

M/S SHRI ENTERPRISES AND OTHERS
...PETITIONERS
V/S

M/S DIMPLE CINEPLEX
...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Atul Goyal, Advocate
for the petitioner(s).

Mr. Puneet Jindal, Sr. Advocate with
Ms. Navroop Jawanda, Advocate for the respondent(s).

HARPREET SINGH BRAR J. (ORAL)

1. For convenience, facts are taken from case bearing CRM-M No.43846 of 2019, as all the matters are connected with each other.

2. Present petition has been filed under Section 482 Cr.P.C. for quashing of the complaint bearing No.NIA/641/2019 dated 01.04.2019 registered under Section 138 of Negotiable Instruments Act read with Section 420 IPC titled as *M/s Dimple Cineplex v. M/s Shri Enterprises and others* pending in the Court of learned Judicial Magistrate Ist Class, Jagadhari (Annexure P-2) as well as order dated 01.04.2019 whereby the petitioners have been summoned to face trial.

FACTUAL BACKGROUND

3. Facts, in brief, are that petitioner no.1 is a partnership firm and petitioner no.2 & 3 are its partners. That the petitioners had entered into a lease agreement with the respondent which is a proprietorship, for running cinemas on rent and it was duly executed and registered on 25.07.2018. The rent agreed was Rs. 5,00,000/- per month and advance cheques were taken by the respondent for the same. Thereupon, a dispute arose between them qua the said rent. When the respondent presented one of the said cheques bearing no.465576 dated 06.01.2019, issued qua the said rent liability in its favour, in the bank, the same was returned vide memo dated 16.02.2019 with the remarks 'Payment Stopped by the Drawer'. Thereafter, a demand notice was issued to the petitioners. In background of these facts, the respondent has filed a complaint u/s 138 of Negotiable Instruments Act dated 01.04.2019 against the petitioners.

CONTENTIONS

4. Learned counsel for the petitioners contends that the petitioners

are victims of false prosecution as the respondent cunningly gave less area to the petitioners than promised in the agreement but charged rent for the full area. It is further contended that petitioner no.3 had resigned as a partner from the firm on 23.11.2018. The learned counsel vociferously contends that the Court of learned Judicial Magistrate Ist Class, Jagadhari does not have jurisdiction to try the said case. He also submits that the impugned complaint has been filed while concealing material facts.

5. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the learned trial Court even before the respondent has led any evidence. The disputed question of fact and probable defence would be seen by the trial Court.

6. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

7. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi)** and another 2022 SCC Online SC 513 and speaking through Justice Hrishikesh Roy, made the following observations: -

“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.”

8. A two Judge Bench of the Hon’ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776** has held as under: -

“10..... Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties.”

9. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458**, decided by the Hon’ble Supreme Court, following observations were made: -

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court

considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

CONCLUSION

10. In view of the above discussion, this Court cannot examine the probable defence of the petitioner(s) set up in the present petition and scuttle the proceedings before the trial Court even before the respondent(s) had led any evidence. The disputed question of fact and the probable defence of the petitioner(s) can only be seen by the trial Court on the basis of evidence adduced by the parties.

11 The present petition stands dismissed. However, keeping in view that the petitioner No.3-Shipra Jain is a household lady and attending the trial would cause inconvenience and hardship to her, in view of the ratio laid down by this court in **CRM-M-25963-2023** titled as ***‘Suresh Kumar and another Vs. The State of Haryana and another’ 2023 (2) Law Herald 1498***, the personal appearance of the petitioner No.3-Shipra Jain, before the learned trial Court, is ordered to be exempted, subject to the following conditions:-

- i) petitioner shall be represented through his counsel;
- ii) shall not delay/stall the trial proceedings;
- iii) shall not dispute their identity as accused;
- iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of his counsel;
- v) shall appear before the trial Court as and when required; and
- vi) any other condition, which the trial Court may impose.

(HARPREET SINGH BRAR)
JUDGE

December 20, 2023
manisha

- | | | |
|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |