

231-2

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

**CRM-M-55232-2022
Date of Decision: 03.03.2023**

Shri Radhe Techbuild Private Limited and others

..... Petitioners

Versus

Parvesh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. R.N. Maurya, Advocate
for the petitioners.

Mr. Archit Singhal, Advocate for
Mr. Yagsimant Attri, Advocate and
Mr. Vaibhav Gupta, Advocate
for the respondent.

HARSH BUNGER J. (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure seeking quashing of order dated 15.09.2022, passed by the Court of Judicial Magistrate Ist Class, Bahadurgarh, District Jhajjar, in complaint case bearing COMA No.493 of 2022 dated 27.04.2022, titled as ***“Parvesh Vs. Shri Radhe Techbuild P. Ltd. and others”***, filed under Section 138 of the Negotiable Instruments Act, 1881, whereby the petitioners have been summoned to face trial.

2. Upon issuance of notice in the present case, learned counsel for the respondent appeared and filed his reply dated 24.01.2023, which is

already on record.

3. Learned counsel for the petitioners has sought quashing of aforesaid impugned order dated 15.09.2022 on two grounds. Firstly, the maintainability of complaint in question before the Courts at Bahadurgarh, Haryana on the basis of territorial jurisdiction and secondly, petitioners No.3 and 4 herein, namely Manoj Singh and Toyaz Chauhan, respectively, neither being the signatories of the cheque nor petitioner No.4 being the Director on the Board of Company when the cheque in question was issued.

3.1 Learned counsel for the petitioners has submitted that the Courts at Bahadurgarh, Haryana, do not have the territorial jurisdiction to entertain and try the complaint in question filed under Section 138 of the Negotiable Instruments Act as it lacked territorial jurisdiction inasmuch as that the cheque in question was presented at Punjabi Bagh West, New Delhi Branch of the H.D.F.C. Bank. It is contended that as per the provisions of Section 142(2) of the Negotiable Instruments Act, the offence under Section 138 *ibid* shall be inquired into and tried only by a Court within whose local jurisdiction the Branch of Bank, where the payee or holder in due course maintains the account, is situated, accordingly it is submitted that only the Court having jurisdiction over the Punjabi Bagh West, New Delhi can inquire into and try the offence under Section 138 of the Negotiable Instruments Act and no other Court.

3.2 Learned counsel for the petitioners has next submitted that the complaint under Section 138 of the Negotiable Instruments Act is not maintainable against petitioners No.3 and 4 as they are not the signatories of the cheque nor petitioner No.4 was the Director on the Board of Company when the cheque in question was issued. It is submitted that petitioner No.4 (Toyaz Chauhan) has stepped out of the Directorship much before, i.e. on

30.01.2020, accordingly, the implication of petitioner No.4 is completely baseless, as nowhere in the complaint, any role has been attributed to him.

4. Per contra, learned counsel for the respondent has submitted that so far as the objection regarding maintainability of the complaint in question is concerned, the same is without any basis in terms of explicit provisions contained in Section 142(2) of the Negotiable Instruments Act, especially in view of the explanation appended thereto. He further submits that the second objection regarding maintainability of the complaint against the petitioners No.3 and 4 on the ground that they were neither signatories of the cheque in question nor petitioner No.4 was the Director on the Board of Company when the cheque in question was issued, is also bereft of any merit because as per Form No.32 (Annexure R-2) prescribed under the Companies Act, 1956, petitioner No.4 (Toyaz Chauhan) is designated as 'Director' under the category of 'Promoter' and even the Directors' Report dated 29.11.2021 (Annexure R-6) has been signed by petitioner No.2 (Puneet Singh Chauhan) and petitioner No.3 (Manoj Singh). A further reference has been made to the Profit and Loss Statement of M/s Shri Radhe Techbuilt Private Limited (Annexure R-7) to show that the same has also been signed by the aforesaid petitioners No.2 and 3 in the capacity of Directors. Learned counsel contends that apart from the above, a perusal of the instant petition would reveal that the facts and grounds taken therein are at best the defence of the petitioners and the same would require leading of evidence before the trial Court, in accordance with law. It is further contended that the case is still at the initial stage inasmuch as that the petitioners have been summoned vide order dated 15.09.2022 to face trial under Section 138 of the Negotiable Instruments Act. Learned

counsel for the respondent submits that the Court should be slow to quash proceedings at the preliminary stages as the same would result in finality without parties being granted opportunity to adduce the evidence and as a consequence thereof, the proper Forum, i.e. the trial Court, is ousted from weighing the material evidence in a particular case. Accordingly, it is prayed that the instant petition lacks any merit and the same be dismissed.

5. I have heard learned counsel for the parties and perused the paper book as well as reply dated 24.01.2023 filed on behalf of the respondent.

6. As regards the first contention raised by learned counsel for the petitioner that the Courts at Bahadurgarh, Haryana, lacked territorial jurisdiction to try and inquire into the complaint filed under Section 138 of the Negotiable Instruments Act, it would be apposite to refer to Section 142 *ibid*, which reads as under:-

“Section 142: Cognizance of offences.

[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period];

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence

punishable under Section 138.].

[(2)] The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.”.

Explanation. - For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

In reference to the aforementioned statutory provisions, the requisite pleadings made by the respondent in his complaint under Section 138 of the Negotiable Instruments Act reads as under:-

“ - x - x -

*11. That it is pertinent to mention that after regular and constant follow ups by the complainant, the accused(s) in discharge of his legal liability again issued a cheque bearing no. **000837** dated **28.02.2022** amounting to **Rs.2,00,00,000/-** (Rupees Two Crores Only) drawn on **ICICI Bank, Anand Vihar, Delhi-110092**, in favour of the complainant, which was dishonoured by the complainant's **HDFC Bank, Punjabi Bagh West, New Delhi-110026**, vide Banker's Return Memo dated **9th March 2022**, with the remarks “**Signature not as per mandate**”. The act of deliberately trying to defraud the complainant by signing the wrong signature, (which is also a criminal offence u/s 420 IPC, 1860) by the accused(s) demonstrates their malafide and dishonest intentions towards*

the complainant. Original cheque along with original Bank Return Memo dated 09.03.2022 is herewith annexed.

- x - x -

*18. That the Cause of Action for the purpose of filing the present complaint, besides the other date has arisen when the accused(s) **failed to make payment of amounts of cheque within 15 days from the date of receipt of Legal Demand Notice on 05.04.2022** as issued by the complainant on account of dishonour of cheque bearing No.000837 in question as evident from the bank return memo dated 09.03.2022. The cause of action further arose when the intimation of legal demand was duly served to the accused(s) and the accused(s) failed to pay the cheque amount within the statutory period of 15 days and the cause of action still continues and the cheque amount is still not been paid by the accused(s) to the complainant. Further the cause of action arose when the cheque got dishonoured since the complainant maintains the bank account in HDFC Bank Ltd. having its branch at Bahadurgarh, Jhajjar, Haryana which is well within the local jurisdiction of this Hon'ble court, and hence, this Hon'ble Court has territorial jurisdiction to try and entertain the present complaint.*

- x - x -"

7. A conjoint reading of the above extracted averments made in the complaint and also the provisions of Section 142 of the Negotiable Instruments Act would leave no manner of doubt that the Court at Bahadurgarh, Haryana is vested with the jurisdiction to entertain and try the complaint under Section 138 of the Negotiable Instruments Act, filed by the respondent. It is clearly stated in the complaint that the cheque in question was dishonored by H.D.F.C. Bank, Punjabi Bagh West, New Delhi and it is also mentioned in paragraph No.18 of the complaint that the complainant maintains the Bank Account in H.D.F.C. Bank Limited, having its Branch at

Bahadurgarh, Jhajjar, Haryana. A perusal of the explanation appended to Section 142(2) of the Negotiable Instruments Act would manifest that in case a cheque is delivered for collection at any Branch of the Bank of the payee or the holder in due course then the cheque shall be deemed to have been delivered to the Branch of the Bank in which the payee or the holder in due course, as the case may be, maintains the account.

Thus, the contention of learned counsel for the petitioners that the Court at Bahadurgarh, Haryana does not have the jurisdiction to try the complaint under Section 138 of the Negotiable Instrument Act, filed by the respondent/complainant, is rejected.

8. I also do not find any merit in the second contention of petitioners that the complaint against petitioners No.3 and 4 was not maintainable as they are not the signatories of the cheque in question nor petitioner No.4 (Toyaz Chauhan) was the Director on the Board of Company when the cheque in question was issued; especially in view of the averments made by the respondent/complainant in paragraphs No.2 and 3 of the complaint, which reads as under:-

*“2. That '**Shri Radhe Techbuild P. Ltd.**' (hereinafter referred as the **accused no.1**) is a private company having its registered office at 1210, V-786, Gali no. 8A, Vijay Park, New Delhi – 110053 and corporate office at Flat no. 128A, Pocket-F, Mayur Vihar, Phase-II, New Delhi, and is represented through its directors, Mr. Punit Singh Chauhan (hereinafter referred as the **accused no. 2**), Mr. Manoj Singh (hereinafter referred as the **accused no. 3**) and Mr. Toyaj Chauhan (hereinafter referred as the **accused no. 4**), and is engaged in the business of buying, selling, renting and operating of self-owned or leased real estate such as apartment buildings and dwellings, non-residential buildings, developing and*

subdividing real estate into lots etc. Copy of the Master data of the accused company is annexed herewith.

3. That since a private company is separate legal entity; the accused no. 1 is represented through its directors. That it is also pertinent to mention that the accused no.2, accused no.3 and accused no.4 are the persons who are involved in the day to day affairs of the company dealing in every small decision of the accused company. It is also important to mention that the accused no.4 is an ex-director of the company and as per the current master data, it is important to mention that the accused no.4 was also responsible for the business conduct of the company and was also, a key managerial personnel when the transactions with the complainant took place. It is pertinent to mention that the official email id of the accused no.1 is in the name of accused no.4.”

9. A perusal of the above extracted averment in the complaint would manifest that the necessary pleadings in terms of Section 141 of the Negotiable Instruments Act have been made by the respondent/complainant in his complaint under Section 138 of the Negotiable Instruments Act. Moreover, the aforesaid contention of the petitioners is their defence, which shall have to be established before the trial Court by leading evidence during the course of trial in the complaint in question.

10. It is well settled 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. Further, 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.

11. In “***Rathish Babu Unnikrishnan Vs. State***”, 2022(2) R.C.R. (Criminal) 871, Hon'ble Apex Court held as under :-

“ - x - x -

17. That 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 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.

- x - x - ”

12. In view of the above discussion, I do not find any merit in this petition, and the same is accordingly dismissed.

13. All pending application(s), if any shall also stand closed.

03.03.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No