284

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-56680-2022
Date of Decision: 11.08.2023

M/s Amritsar Health & Hospitality Services Pvt. Ltd.
..... Petitioner

Versus

Punjab National Bank
..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. M.S. Khaira, Senior Advocate assisted by
Mr. Ripudaman Singh Sidhu, Advocate
for the petitioner.

Mr. Ankush Aggarwal, Advocate
for the respondent.

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HARSH BUNGER J.

1. Petitioner (M/s Amritsar Health & Hospitality Services Pvt. Ltd.) has filed the present petition under Section 482 of the Code of Criminal Procedure for quashing of Complaint No.NACT/2331/2020 dated 13.08.2020, titled as ***"Punjab National Bank Vs. M/s Amritsar Health & Hospitality Services"*** (Annexure P-9) and summoning order dated 05.05.2022 passed by the Court Judicial Magistrate Ist Class, Amritsar (Annexure P-10) and all the subsequent proceedings arising therefrom.

2. Briefly, the petitioner is stated to be running 'Holy Heart Hospital', a unit of M/s Amritsar Health & Hospitality Services, Taranwala

Bridge, Amritsar City and for the construction and running the said hospital, petitioner had availed various cash credit facilities, loans etc. in the year 2015. As per petitioner, for the purpose of security of the said loan facility, petitioner had issued numerous cheques to the complainant Punjab National Bank in the year 2015 itself. Petitioner claims that a security cheque bearing No.421515 (Annexure P-5) was issued from the Cash Credit Account No.3305008700002012, maintained with the Punjab National Bank towards the term loan facility for Hospital project availed by the petitioner from the Punjab National Bank. The petitioner claims that the aforesaid account maintained with the respondent-Bank was discontinued and closed by the Bank on 02.08.2018 and the complainant-Bank had itself directed the petitioner for not issuing any cheque from aforesaid account after the said date. It is the case of the petitioner that the Bank had extended another Cash Credit facility as a pharmacy account in the name of Amritsar Cardiac and Implants Pharmacy Account No.3395008700002191 and a new Current Account in the name of Amritsar Health and Hospitality Services Pvt. Ltd., bearing No.8676002100000529 was opened in the Punjab National Bank to conduct all financial transactions. As per petitioner, due to internal disputes between the partners of the petitioner's erstwhile firm, the timely financial discipline with regard to the term loan could not be maintained by the petitioner as a result of which, all the erstwhile firm's accounts were declared Non Performing Assets (N.P.A.) on 13.06.2019 by the respondent-Bank. The petitioner claims that he had approached the Bank on numerous occasions to resume the re-structuring facility, however, the same was refused by the Bank and proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') were initiated against the petitioner and the Bank took the symbolic possession of the Hospital.

3. Petitioner claims that upon refusal of the Bank to provide re-structuring facility, the authorized signatory of the petitioner-Firm herein, namely Dr. Harshbir Singh Pannu, filed a writ petition, bearing CWP No.26248 of 2019, before this Court and now in order to harass and coerce the petitioner, the Bank had fraudulently presented the aforesaid Cheque bearing No.421515 from the Account No.3305008700002012, which according to the petitioner, stood closed.

4. Since the cheque No.421515 was not honored, accordingly, the Bank filed a complaint under Section 138 of the Negotiable Instruments Act bearing No.NACT/2331/2020 dated 13.08.2020, titled as ***"Punjab National Bank Vs. M/s Amritsar Health and Hospitality Services"***, wherein the learned Magistrate passed summoning order dated 05.05.2022. It appears that vide order dated 08.09.2022 (Annexure P-11), non-bailable warrants of arrest were issued against the petitioner herein.

5. Upon issuance of notice, learned counsel for the respondents appeared and filed reply by way of affidavit of Jaswinder Singh Chadha, Senior Manager, Punjab National Bank, Circle Sastra, Amritsar (Punjab), which is already on record.

6. Learned counsel for the petitioner contends that the cheque in dispute was issued by the petitioner in the form of security cheque and the same cannot be made the basis of an action under Section 138 of the Negotiable Instruments Act. It is further contended that once the Account No.3305008700002012 has been closed by the Bank on 02.08.2018 then there was no question of presenting the aforesaid security cheque by the Bank and then institute proceedings under Section 138 of the Negotiable Instruments Act. Accordingly, it is submitted that the proceedings in

complaint No.NACT/2331/2020 is nothing but an abuse of process of law and prayer is made for quashing of complaint and all consequential proceedings.

7. It is the stand of respondent/Bank that the instant matter relates to a term loan of Rs.10,85,000/-, which was sanctioned on 04.02.2015 by the Bank in favour of the accused persons. It is further stated that the accused persons issued a post dated cheque dated 17.06.2020 for an amount of Rs.2,77,063.73/- with the assurance that the said cheque is good for payment and shall be duly encashed on its presentation on the due date. It is submitted that when the said cheque was presented, the same was not honored and was returned unpaid vide Memo dated 24.06.2020, thereafter, bank issued a legal notice dated 30.06.2020 and since the payment was not made in the stipulated period, accordingly complaint under Section 138 of the Negotiable Instruments Act was filed wherein the accused persons were summoned by the trial Court vide order dated 05.05.2022. It is further submitted that Dr. Harshbir Singh Pannu, authorized signatory of the petitioner-Hospital had earlier not put in appearance before the trial Court, however, in pursuance of the non-bailable warrants, the aforesaid Dr. Harshbir Singh Pannu had surrenderd on 02.02.2023 and was thereafter released on bail. The Bank has denied the assertion of the petitioner that as per letter dated 19.02.2018 (Annexure P-3), the account in question has been closed. As per the bank, the cheque in dispute was issued as a post dated cheque, in discharge of the part liability. It is also the stand of the Bank that the accused persons have total five accounts with the respondent-Bank and as on 31.12.2022, an amount of Rs.6,63,81,566/- is outstanding. It is contended that the accused persons are not paying the loan and are big defaulters of the Bank. It is submitted that the matter in hand would require

evidence to be led by the respective parties. Accordingly by placing reliance upon the judgment rendered by the Hon'ble Supreme Court in Rathtish Babu's case (supra), learned counsel for the respondent-Bank has prayed for dismissal of the instant petition.

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

9. As regards the first contention raised by learned counsel for the petitioner that the security cheque cannot be made the basis for an action under Section 138 of the Negotiable Instruments Act, is concerned, the said position stands clarified by the Hon'ble Supreme Court in the judgment passed in ***"Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited", 2016(4) R.C.R. (Criminal) 385***, wherein it was held that a complaint under Section 138 of the Negotiable Instruments Act would be maintainable in respect of a security cheque also. Relevant extract thereof reads as under:-

> " *- x - x -*
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> *2. Question for consideration is whether in the facts of the present case, the dishonour of a post-dated cheque given for repayment of loan installment which is also described as "security" in the loan agreement is covered by Section 138 of the Negotiable Instruments Act, 1881 ("the Act").*
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> *- x - x -*
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> *10. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in Indus Airways (supra) with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque liability or debt exists or the amount*

has become legally recoverable, the Section is attracted and not otherwise.

11. Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of installments. The repayment becomes due under the agreement, the moment the loan is advanced and the installment falls due. It is undisputed that the loan was duly disbursed on 28th February, 2002 which was prior to the date of the cheques. Once the loan was disbursed and installments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

12. Judgment in Indus Airways (supra) is clearly distinguishable. As already noted, it was held therein that liability arising out of claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself at par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of cheque issued for discharge of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in presenti in terms of the loan agreement, as against the case of Indus Airways (supra) where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. Keeping in mind this fine but real distinction, the said judgment cannot be applied to a case of present nature where the cheque was for repayment of loan installment which had fallen due though such deposit of cheques towards repayment of installments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways (supra), one cannot lose sight of the difference between a *transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque.*

13. Crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court.

- x - x -

15. In HMT Watches Ltd. versus M.A. Abida[8], relied upon on behalf of the respondent, this Court dealt with the contention that the proceedings under Section 138 were liable to be quashed as the cheques were given as "security" as per defence of the accused. Negativing the contention, this Court held :-

> *"10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. 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. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to*

whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. In Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd. [(2008) 13 SCC 678], this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22) "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. In Rallis India Ltd. v. Poduru Vidya Bhushan [(2011) 13 SCC 88], this Court expressed its views on this point as under: (SCC p. 93, para 12) "12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm."

16. We are in respectful agreement with the above observations. In the present case, reference to the complaint (a copy of which is Annexures P-7) shows that as per the case of the complainant, the cheques which were subject matter of the said complaint were towards the partial repayment of the dues under the loan agreement (para 5 of the complaint).

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.

18. In ***Rangappa v. Sri Mohan, 2010(3) RCR (Criminal) 164 : 2010(3) RCR (Civil) 197 : 2010(3) Recent Apex Judgments (R.A.J.) 415 : (2010) 11 SCC 441*** *this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the* *complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post dated cheque is a well recognized mode of payment* ***Goaplast (P) Ltd. v. Chico Ursula D' Souza 2003(2) RCR (Criminal) 131 : (2003) 3 SCC 232****.*

19. Thus, the question has to be answered in favour of the respondent and against the appellant. Dishonour of cheque in the present case being for discharge of existing liability is covered by Section 138 of the Act, as rightly held by the High Court.

- x - x - ”

10. As regards the second contention raised by learned counsel for the petitioner that once the account of petitioner stood closed by the Bank then the cheque in dispute could also not be used, in that context learned counsel for petitioner submitted that Account No.3305008700002012 in the respondent-Bank was discontinued and closed on 02.08.2018. To buttress this submission, learned counsel for petitioner has placed reliance upon a copy of e-mail dated 09.02.2018 (Annexure P-2), which reads as under:-

“ *- x - x -*

From: pnb (bo3395@pnb.co.in)

To: harshbirpannu@yahoo.com

Date: Friday, 9 February, 2018 at 12:42 pm IST

Sir,

This has reference to your Cash Credit A/c number 3395008700002012 & Current A/c number 3395002100 119431 maintained with our branch. In this regard we have to inform that operations in your above mentioned A/C's has been stopped on a/c of notice received by us from your partner Dr. Jaswinder Singh.

Dr. Jaswinder Singh vide his notice Dt.08.02.2018 (Copy attached) has informed that as in terms of your Partnership agreement Dt.12.03.2014, all the withdrawls in these A/C's need to be signed by Two of the Partners, one of which will be

Dr. Jaswinder Singh. Since he is no more signing any cheque due to your internal dispute, he has requested the Bank not to allow any cheque/withdrawal/Transfer without his consent.

Under the circumstances, we have not option but to freeze all debits in your both the A/C's.

You are as such requested not to issue any cheques drawn on your above said A/C's till the matter is resolved amongst the Partners and proper intimation of the same is provided to the Bank.

Asstt. General Manager

<u>PNB's Offiering</u>

- x - x - ”

Learned counsel for petitioner has further referred to a letter dated 19.02.2018 (Annexure P-3) issued by the Punjab National bank, which reads as under:-

“ - x - x -

The bank as such has stopped all the debit transactions in the account since 08.02.2018 evening. The intimation in respect of the same was also provided to other Partner Dr. Harshbir Pannu vide mail Dt.09.02.2018 who is currently operating Hospital. He was also requested not to issue any cheques drawn on accounts of the firm till the matter is resolved among the Partners and proper intimation of the ... was provided to the Bank.

However o 17.02.2018, after discussions with our higher authorities we had allowed payment of Rs.5,88,460.00 in favour of PSPCL as the electricity bill of the Hospital was pending for four months. The payment was allowed as a special case to avoid disconnection of electric supply to the Hospital which could endanger the life of patients in the Hospital.

This payment was made ignoring notice to Dr. Jaswinder Singh as a special case to safeguard life of patients in the Hospital which will not be allowed in future.

We as such request all the three partners to resolve their issues immediately so as to ensure smooth operations of accounts of the firm which will ensure proper & smooth functioning of the Hospital.

In case the matter is not resolved among the partners, the partners running the hospital are requested to manage their finances & Hospital in such a way that there is no impact of the same on the life of the patients in the Hospital.

The Bank will not be responsible for any consequences arising out of personal disputes & egos of the Partners.

Though your all loan a/c's are running regular at present, you all are requested to ensure their regularity in future as well. In case of any default in the loan a/c's of the firm, the Bank will have to initiate all legal options as per Bank guidelines to safeguard its interest."

11. I have considered the afore-referred documents and also the submissions of learned counsel for petitioner. A bare perusal of the aforesaid e-mail (Annexure P-2) would reveal that it has nowhere been mentioned that the account stands closed since 02.08.2018. Rather the said e-mail is in the form of advisory to the authorized signatory of the petitioner, namely Dr. Harshbir Singh Pannu, requesting him not to issue any cheque drawn on the account mentioned therein till the issue is resolved amongst the partners and the intimation is given to the Bank.

12. Further, a perusal of letter dated 19.02.2018 (Annexure P-3) would show that the Bank had allowed payment of Rs.5,88,460/- in favour of the P.S.P.C.L. as the electricity bill of the hospital was pending for four months. Accordingly, it is not discernable as to on what basis the petitioner claims that the account stood closed.

13. In the instant case, concededly the petitioner has not maintained the financial discipline as regards the term loan facilities availed by it. The Magistrate vide order dated 05.05.2022 (Annexure P-10) has summoned the

petitioner and others. The case is at initial stage and Dr. Harshbir Singh Pannu, the authorised signatory of petitioner-Hospital is stated to have surrendered on 02.02.2023 and was released on bail. The complicity of petitioner and other accused shall be subject matter of trial. 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.

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

> " *- x - x -*
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> *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.*
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> *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.*
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> *- x - x -* "

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

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

11.08.2023 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No