

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55949-2018 (O&M)
Decided on : 15.11.2023

Umed Singh

..... Petitioner

Versus

Satbir Singh Kadian

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. K.D.S.Hooda, Advocate
for the petitioner.

Mr. Anuj Raura, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

CRM-19555-2019

Application is allowed as prayed for and Annexures R-5 and R-6 are taken on record subject to all just exceptions.

Main case

Instant petition has been filed under Section 482 Cr.PC for quashing of the complaint case No.NACT/52/2018 dated 12.01.2018 titled as ‘Satbir Singh Kadian vs. Umed Singh’ as well as order dated 12.01.2018 (Annexure P-4) vide which the petitioner has been summoned to face the trial under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the Act’).

2. Learned counsel for the petitioner submits that the complaint in question deserves to be quashed as the necessary ingredients to invoke the mischief of offences under Section 138 of the Act are clearly amiss in the case in

hand, more so, as it is a matter of record that there was no legally enforceable debt/liability in existence at the time, when the cheques in question, were presented before the bank. It has been further submitted that in the complaint in question, paragraph 6 of the compromise effected between the parties has been reproduced, wherein it stands averred that there was a dispute qua the number of flats developed by one M/s Pareena Infrastructure Pvt. Ltd., Sector 68, Gurugram, between the petitioner and the complainant. After the settlement of this dispute, flats were to be transferred by the petitioner in favour of the complainant within a period of one month from the date of settlement of dispute; in case, the petitioner would have failed to transfer the flats in the name of complainant within the above stipulated time frame specified in the settlement arrived at between the parties, the complainant could have only then presented the cheques for encashment. However, the complaint in question was clearly premature as the complainant had presented the cheque even before the settlement arrived at between the parties, could see the light of the day. It has been further submitted that the liability of the petitioner as per the compromise would have arisen only had the petitioner failed to transfer the flats within one month from the date of settlement. However, the dispute qua the flats in question had not yet been settled and thus, there was no occasion for the complainant to present the cheques in question. Furthermore, even the complaint as well as the affidavit of the complainant were completely silent qua the factum of any settlement having been arrived at between the parties qua the flats in question.

3. Per contra learned counsel for the respondent while opposing the

prayer and submissions made by counsel opposite has submitted that a settlement had indeed been effected between the parties pursuant to which the cheques in question had been issued. In fact, pursuant to the settlement, the police had submitted two cancellation reports in FIR Nos.243 and 244 both dated 08.05.2015 under Sections 420 and 120-B IPC registered at Police Station Palam Vihar, Gurgaon, to which the petitioner had also given his consent. In support of his submissions, learned counsel has drawn the attention of this Court to Annexures R-4 and R-5. It has been submitted that subsequently the cheques had been issued by the petitioner which, however, had been returned after being dishonoured by the bank. Learned counsel has submitted that though the complainant had served a legal notice upon the petitioner yet the petitioner had failed to make payment, hence, the petitioner had been rightly summoned by the trial court. Learned counsel for the respondent has also submitted that clause 10 of the settlement between the parties provided that the cheques referred to in the settlement deed were to be presented on or before 17.09.2015. It has been still further submitted that the petitioner had himself issued post dated cheques by filling in the date on the cheques. Thus, there was indeed a legally existing debt/liability on the date of presentation of the cheques and complaint in question could not be said to be premature.

4. Heard learned counsel for the parties and perused the relevant material available on record.

5. No doubt, the powers conferred under Section 482 Cr.PC are wide however, they have to be exercised sparingly and with a great deal of circumspection. Furthermore, in cases under Negotiable Instruments Act,

Hon'ble the Supreme Court has time and again cautioned against the quashing of the complaint at a pre-trial stage, more so, when there is a factual dispute between the parties. It would be apposite to refer to the observations made by Hon'ble the Supreme Court in ***Rathish Babu Unnikrishnan vs. The State (Govt. of NCT of Delhi) and anr., 2022(2) RCR (Crl.) 871*** wherein the Court has observed as under:

“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 unmerited 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.”

6. Adverting to the case in hand, petitioner has raised several issues

especially qua the settlement deed and absence of existence of a legally enforceable debt/liability at the time of presentation of cheques, which however, on the other hand, has been vehemently disputed by learned counsel for the complainant. The controversy in hand can only be resolved when the parties lead their respective evidence before the trial court. Therefore, this Court would loathe to interfere in the proceedings at this stage, much less examine the authenticity of the allegations levelled by the respondent-complainant.

7. As a sequel to above, this Court does not deem it appropriate to invoke its inherent powers vested under Section 482 Cr.PC for quashing the complaint as well as summoning order dated 12.01.2018 qua the petitioner. Accordingly, the present petition stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

15.11.2023

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Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No