

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

120

CRM-M-59195-2023

Date of Decision: December 20, 2023

Narender Gorsî @ Narinder Gorsî

.....Petitioner(s)

Vs.

M/s Richway Constructions Company

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parveen Kumar, Advocate for the petitioner.

HARPREET SINGH BRAR J. (ORAL)

1 This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of complaint filed by respondent under Section 138 of Negotiable Instruments Act, 1881 bearing No. NACT/8686/2022 dated 19.07.2022 titled as "M/s Richway Construction Company Vs. Narender Gorsî" pending in the Court of learned JMJC, Ambala and all consequential proceedings arising therefrom.

2. A two Judge Bench of the Hon'ble Supreme Court in ***HMT Watches Ltd. vs. M.A. Abida, (2008) 13 SCC 678***, speaking through Justice Dipak Misra, 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."

3. Following the above principle, another decision of a two Judge Bench in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2014) 12 SCC 539***, speaking through Justice Adarsh Kumar Goel, has held as under

"16. 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 dispute question of fact."

4. Having heard learned counsel for the petitioner and after perusing the record, this Court can not examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the learned trial Court even when the respondent has not led any evidence. The disputed question of fact and probable defence would be seen by the trial Court on the basis of evidence adduced by the parties.

5. The petition is dismissed.

(HARPREET SINGH BRAR)
JUDGE

December 20, 2023
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Whether speaking/reasoned: Yes/No
Whether reportable: No