

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

133-CRM-M-1507-2024 (O&M)

Date of Decision: 11.01.2024

Naresh Chawla

... Petitioner

VS.

M/s IIFL Home Finance Ltd.

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanjay Jain, Advocate, and
Mr. Sachmeet Singh Randhawa, Advocate
for the petitioner

Sandeep Moudgil, J. (Oral)

This is a petition under Section 482 Cr.P.C. for quashing of the complaint NACT No.33216 dated 08.10.2018 filed by the respondent/complainant under Sections 25 & 27 of the Payment and Settlement System Act, 2007, District Gurugram (Annexure P1).

The brief facts of the case are that the Builder i.e. M/s Magic Info Solutions Pvt. Ltd. (hereinafter "Builder") through its authorized salesperson approached the Petitioner/Accused for investment in their upcoming project "Godrej Summit" situated at Dwarka Expressway, Surat Nagar, Phase I, Sector 104, Gurgaon, Haryana with the assurance that it shall pay the pre-delivery equated monthly installments (EMI's) and will also give fixed and assured return @ 18% p.a to the Petitioner. The Petitioner and the Builder entered into the Builder Buyer Agreement dated 26.10.2016 for the purchase of an apartment being Apartment No. K-406, 4th Floor, in the said Project which categorically specified that the payment shall be made in the construction linked payment plan. A Tripartite agreement was also executed between the family members of the Petitioner, the Respondent, and the

Builder, wherein it was categorically stated that the Respondent shall disburse the loan as per the stage of construction of the project. At the behest of the Builder, the Respondent disbursed the entire loan amount against the said unit completely ignoring the terms of the Tripartite Agreement entered between the parties. As per the agreed terms, the Builder "M/s Magic Info Solutions Pvt. Ltd." has been making the payments of the EMIs against the said Loan to the Respondent, between the period 2016-2023. An amount of Rs. 84,832/- towards the monthly instalment of August, 2018 was debited by the Respondent. The Respondent allegedly issued the Demand Notice dated 17.08.2018 (Annexure P2 colly) to the Petitioner under Section 25 of the Payment and Settlement System Act, 2007 vide Return Memo dated 31.08.2018, purportedly issued by Standard Chartered Bank to the Respondent for intimation of amount dishonored on 09.08.2018 (Annexure P3). An amount of Rs. 80,700/- and Rs. 84840/ was credited to the account of the Respondent towards a monthly installment along with penal charges.

The respondent, despite receipt of the monthly instalment of Rs.80,700/-on 31.08.2018 and Rs.84,840/- on 21.09.2018, filed the complaint NCAT/33216/2018, titled as "M/s IIFL Home Finance Ltd. Vs. M/s Naresh Chawla HUF & Anr." against the petitioner, under Sections 25 and 27 of the Payment and Settlement System Act, 2007 on 08.10.2018 for recovery of Rs.84,832/- from the petitioner. The Respondent filed its preliminary evidence by way of an Affidavit. The Court of Ld. Judicial Magistrate First Class, Gurgaon, vide the order dated 28.09.2020, issued summons to the petitioner and as soon as the Petitioner came to know about the pendency of the case, the petitioner appeared before the court and was granted bail.

Learned counsel for the petitioner contended that the statements of account issued by the respondent *qua* the Petitioner received through two emails dated 01.10.2023 and 04.01.2024 (Annexure P5 colly) for the period 25.11.2016 to 31.09.2023 and for the period 25.11.2016 to 31.12.2023 shows the outstanding instalment amount against the petitioner to be Rs. 0.00 and therefore, on the date of filing of the complaint on 08.10.2018, evidently, there was no debt or due recoverable from the petitioner inasmuch as the dishonoured amount via electronic transfer of Rs.84,832/- stood subsequently paid on 31.08.2018.

He further submitted that the alleged demand notice dated 17.08.2018 was never received by the petitioner and in this regard, the respondent has failed to produce any tracking report in relation thereto and as such, the proceedings instituted under Section 25 of the Act, that too without serving the mandatory notice upon the petitioner is liable to be quashed. Reliance has been placed on **S.P. Mani and Mohan Diary Versus Dr Snehalatha Elangovan, (2022) SCC Online SC 1238**, to contend that the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) or Section 25 of the Act, is made out only after the drawer's failure to make payment, either through cheque or via electronic fund transfer, within 15 days of receipt of the demand notice.

Another argument raised on behalf of the petitioner is that the veracity of the contents of the impugned complaint is doubtful in view of the fact that the said complaint has not been initiated by the authorized representative of the respondent-company, nor does it bear the stamp or seal of the company inasmuch as the said complaint has been signed by one

Ranvijay, whose credentials are alleged to vary in different parts of the complaint and as such, the complaint, on this ground alone, is liable to be set aside.

Heard learned counsel for the petitioner and gone through the record.

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. Reference can be made to the Supreme Court decision in **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2009) 2 SCC 513.**

The petitioner may adduce direct evidence to prove that there was no debt or liability to be discharged and to disprove the presumption of the respondent, the petitioner has to bring on the record circumstances which may lead the court to believe that the consideration and debt did not exist or it was so probable that a prudent man would act upon the plea that they did not exist.

At any rate, whenever facts are disputed, the truth should be allowed to emerge by weighing the evidence. It is settled proposition of law that when disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 25/27 of Payment and Settlement System Act, 2007 or for that matter, under the NI Act, ought not to be quashed in exercise of inherent jurisdiction under Section 482 CrPC. Albeit, the High Courts do have the power to quash such complaints on the legal issues like limitation, etc. Bearing in mind the

principles for exercise of jurisdiction in a proceeding for quashing and on careful reading of the complaint, what is discernible is that though at one point of time, in the light of the account statements supplied by the respondent-Bank to the petitioner, there was '0' outstanding against the petitioner. So much so, what is adjudicable is the assertion made on behalf of the petitioner with regard to the maintainability of the complaint keeping in view the fact that the respondent-Bank is in receipt of the disputed monthly instalment of Rs.80,700/-and 84,840/- received by the Bank through electronic fund transfer on 31.08.2018 and 21.09.2018.

In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under Section 482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two Judges' Bench in **State of Haryana v. Bhajan Lal, AIR 1992 SC 604**, and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of

rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

The Supreme Court in **Rajiv Thapar & Ors. vs. Madan Lal Kapoor, (2013) 3 SCC 330** succinctly expressed the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges:-

“28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same.”

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. It is also noteworthy 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. 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.

It, however, does not dispense with the obligation of the prosecution to prove the charges beyond all reasonable doubt. The presumptive provision with reverse burden of proof, does not sanction conviction on basis of preponderance of probability. A fact can be said to have been proved if it is established beyond reasonable doubt and not on preponderance of probability. The right of the accused to a fair trial could not be whittled down under the Act as was considered in **Noor Aga v. State of Punjab, (2008) 16 SCC 417** wherein the Supreme Court observed that initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift. Even then, the standard of proof required for the accused to prove his innocence is not as high as that of the prosecution. Whereas the standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” but it is “preponderance of probability” on the accused.

Therefore, in view of the discussions made hereinabove, while exercising power under Section 482 CrPC, it is not open for this Court to rely on the averments only made by the petitioner inasmuch this Court can only interfere to quash such complaints on the legal issues like limitation, etc.

keeping in mind the principles for exercise of jurisdiction in a proceeding for quashing and if, after careful reading of the complaint, this Court comes to the conclusion that disputed questions of facts are involved and the same need to be adjudicated by the trial court after affording opportunity to the parties adduce evidence, the prayer for quashing of the complaint at pre-trial stage deserves to be rejected outrightly. This Court cannot be oblivious of the fact that if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial inasmuch as it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. Therefore, this Court is of the considered opinion that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and since the averments made by the petitioner in the present case does not disclose it to be categorized as the rarest case, this Court is of the firm view that the prayer for quashing of the impugned complaint cannot be entertained, at this stage.

For the foregoing reasons, this Court does not find any merit in this petition and as such, the same stands dismissed.

11.01.2024

V. Vishal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No