

**203 IN THE HIGH COURT OF PUNJAB AND HARYANA  
CHANDIGARH**

**RAMESH BANSAL**

**...Petitioner**

V/S

HARJINDER SINGH TULI &amp; ANOTHER

## ...Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Swarn Tiwana, Advocate  
for the petitioner.

Mr. Manjit Singh Uppal, Advocate  
for respondent No. 1.

Mr. Karan S. Gill, Advocate  
for respondent No. 2.

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**HARPREET SINGH BRAR J. (Oral)**

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of complaint No. 5980 of 2005 registered under Section 138 of Negotiable Instruments Act dated 01.07.2015 (Annexure P-1) filed by the complainant/respondent No. 1 against the petitioner which is pending in the court of learned Judicial Magistrate Ist Class, Chandigarh UT titled as ***“Harjinder Singh Tuli Vs. Ramesh Bansal”*** and further seeking quashing of summoning order dated 02.07.2015 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Chandigarh as well as the order dated 07.01.2019 (Annexure P-11) passed by learned Additional District Judge, Chandigarh, whereby revision petition filed against the summoning order dated 02.07.2015 has been dismissed and all other subsequent proceedings arising out of the said complaint.

2. Learned counsel for the petitioner *inter alia* contends that the genesis of the dispute pertains to a Memorandum of Understanding

(hereinafter to be referred as 'MOU') signed between the petitioner and the complainant/respondent No. 1 dated 31.10.2014. In the said written MOU, complainant has agreed to provide financial services of Rs. 3,00 crore to the petitioner to meet his financial requirements for setting up an industrial plant. In lieu of the services provided by the complainant, the petitioner has agreed to pay Rs. 6 crore to the complainant after disbursement of the loan amount. Thereafter the complainant started blackmailing the petitioner and has taken away all the papers of the properties of the petitioner and also taken away his Mercedes Bez and Lexus Cars in lieu of the part payment of the professional charges. Complainant also instituted a civil suit against the petitioner and after the petitioner gave the cheque in question, the civil suit filed by the petitioner was withdrawn and as such the petitioner has been falsely implicated and the learned trial Court has passed the summoning order without going into the root of the controversy. The cheque in question was issued in the name of Harjinder Singh, whereas it was presented in the account of Firm namely M/s Singh Harjinder and Associates, to whom the petitioner has no liability or legally enforceable debt. Learned counsel further contends that the complainant has cheated other persons also by adopting the similar modes operandi and he is facing trial in those cases under Section 138 of Negotiable Instruments Act and criminal trial under the provisions of Indian Penal Code.

3. Per contra, learned counsel for respondent No. 1-complainant submits that petitioner can raise all these pleas before the learned trial Court as the disputed questions of facts can only be adjudicated during the course of the trial and the degree of satisfaction required for an offence under

Section 138 of Negotiable Instruments Act is the pre-ponderance of probabilities. The petitioner is only required to rebut the presumption.

4. Having heard the learned counsel for the parties and after perusing the record, this Court finds no force in the arguments raised by learned counsel for the petitioner and further this Court finds no infirmity in the order passed by learned trial Court vide which the petitioner has been summoned. It is a trite law that at the time of passing of summoning order, the trial Court is required to find the existence of prima facie case and the learned trial Court is not required to evaluate the pros and cons of the case and convert it into a mini trial.

5. A two Judge Bench of the Hon'ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776** 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.”*

6. In view of the above, this Court shall not be in a position to appreciate and adjudicate the disputed questions of facts and appreciate the defence set up by the petitioner in the present petition. As such, the present petition is hereby dismissed. However, the petitioner would be at liberty to raise all the pleas taken in the present petition at the appropriate stage before the learned trial Court in accordance with law.

7. Needless to say that nothing observed hereinabove shall be construed to be an expression on the merits of the case and the learned trial

Court shall proceed strictly in accordance with law and adjudicate the case on its merits, without being prejudiced by the findings of this Court.

8. Pending CRM(s), if any, are also disposed of accordingly.

05.03.2024  
*Ajay Goswami*

(HARPREET SINGH BRAR)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |