

CRM-M-2216-2024

125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2216-2024

Date of decision: 16.01.2024

AMIT KUMAR JAIN

...Petitioner

V/s

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohit Kakkar, Advocate
for Mr. Harinder Pal Singh Ishar, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the complaint bearing No. NACT-789 of 2018 dated 29.10.2018 titled as "***Baljinder Kaur Vs. Amit Jain***" (Annexure P-1) along with subsequent summoning order dated 25.04.2019 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Batala, District Gurdaspur.

2. Learned counsel for the petitioner *inter alia* contends that petitioner is not the account holder of the account No. 006100100003915 of Almora Urban Cooperative Bank Ltd. Branch Meera Marg Haldwani. As per information available with the petitioner, the aforesaid account belongs to one Azim. He further submits that even the signatures on the cheque in question are not of the petitioner. The petitioner came to know about the pendency of the present case, on receiving non-bailable warrants from the local Police Station. Learned counsel further submits that the summoning order has been issued by learned Judicial Magistrate

Ist Class, Batala, in a routine and casual manner and once the petitioner

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has no connection with the alleged offence, the filing of the complaint and issuance of summoning order thereafter, is an abuse of the process of law.

3. Having heard the learned counsel for the petitioner, this Court finds no ground to examine the disputed questions of facts pleaded by the petitioner. It is a settled principle of law that the disputed questions of facts can only be adjudicated after the parties have duly adduced their evidence. High Court in exercise of inherent powers under Section 482 of Cr.P.C. cannot evaluate the truthfulness of the allegations or the veracity of the probable defence, however, convincing it might seem, any such attempt would be impermissible in law, as it would amount to giving finality to the accusation even before the complaint is allowed to adduce the evidence to substantiate the same. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in "**Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another**" 2022 SCC Online SC 513 and speaking through Justice Hrishikesh Roy, the following was observed:-

"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."

A two Judge bench of the Hon'ble Supreme Court in **HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776** has held that

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inherent powers under Section 482 Cr.P.C. cannot be extended for determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence of record and interference by this Court with regards to factual questions is impermissible in law.

4. In view of the discussion made hereinabove, the present petition is dismissed. However, the petitioner would be at liberty to raise all the pleas taken in the present petition before the learned trial Court, at the appropriate stage, during the course of the trial.

5. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed in accordance with law without being prejudiced by observations of this Court.

6. Further, keeping in view the petitioner being a resident of Uttarakhand and the trial of the case is taking place at Batala and attending the trial proceedings on account of long distance travel would cause great inconvenience and hardship to the petitioner, in view of the law laid down by this Court passed in CRM-M-25963-2023 decided on 22.05.2023 titled as ***Suresh Kumar and Another Vs. The State of Haryana and Another***, the personal appearance of the petitioner before the trial Court shall remain exempted during the course of trial subject to the following conditions:

- i) petitioner shall be represented through his counsel;
- ii) shall not delay/stall the trial proceedings;
- iii) shall not dispute his identity as accused;
- iv) shall have no objection if the prosecution evidence is recorded in his absence but in the presence of his counsel;

- v) shall appear before the trial Court as and when required; and
- vi) any other condition, which the trial Court may impose.

(HARPREET SINGH BRAR)
JUDGE

16.01.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No