

CRM-M-3507-2024
Date of decision: 23.01.2024

Anuj Agencies through Prop Anuj GuptaPetitioner

Versus

M/s Shri Ram Finance Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Sheokand, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of complaint bearing No. NACT/4257/2023 dated 13.06.2023 (Annexure P-1) titled as 'M/s Shri Ram Finance Limited Vs. Anuj Agencies and another' under Section 138 of Negotiable Instruments Act, 1881, pending in the Court of Judicial Magistrate 1st Class, Chandigarh and consequent summoning order dated 13.09.2023 (Annexure P-6) and all consequential proceedings arising therefrom.

Learned counsel for the petitioner *inter alia* contends that respondent has not attached the loan agreement to indicate the legally enforceable liability of the petitioner with regard to the cheque in question that was admittedly issued in the year 2023. The loan agreement was executed between the parties on 28.05.2016. The respondent has retained the original loan agreement with *malafide* intention and has never returned the same to the petitioner. Moreover, the respondent has wilfully given the wrong address in

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the complaint, whereas, in the letter issued by the respondent on 21.11.2017, the correct address was duly reflected. The respondent has not attached any calculation of the loan EMI overdues and it has not mentioned the same in the legal demand notice as well.

Learned counsel for the petitioner lastly submits that handwriting on the cheque is also not of the petitioner and from all the facts and circumstances, it is apparent that the complaint is filed on the basis of unfounded and frivolous grounds and the same is liable to be quashed.

Having heard learned counsel for the petitioner and after perusal of the record, it transpires that the disputed question of facts cannot be appreciated by this Court and the probable defence set up by the petitioner in the present case can only be looked into by the learned trial Court on the basis of evidence advanced by the parties. Reliance in this regard can be made to a judgment passed by two Judge Bench of the Hon'ble Supreme Court in 'HMT Watches Limited vs M.A. Abida' (2015) 11 SCC 776 and 'Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another' 2022 SCC Online SC 513.

However, keeping in view the fact that petitioner is operating his business at Baddi, Himachal Pradesh and he is a resident of Kalka in Haryana, the trial of the case is proceeding before the learned JMIC, Chandigarh and the petitioner would face unnecessary inconvenience and harassment in attending the trial in Chandigarh on each and every date.

In view of the ratio of law laid down by this Court in CRM-M-25963-2023 titled as 'Suresh Kumar and another Vs. The State of Haryana and another' 2023 (2) Law Herald 1498, after the petitioner put in appearance before the learned trial Court and in case, he filed an application for seeking

exemption from his personal appearance before the trial Court, the same shall be allowed 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

23.01.2024
Neha

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