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

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**CRM-M-7389-2024 (O&M)
Date of Decision : May 03, 2024**

ANAND KUMAR**-PETITIONER****V/S****STATE OF HARYANA AND ANOTHER****-RESPONDENTS****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Saksham Mahajan, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, A.A.G., Haryana.

Mr. Rana Gurtej Singh, Advocate
for the respondent No.2.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioner seeks quashing of the proceedings emanating from a private complaint bearing CIS No. NACT-167-2021, as instituted against him by the respondent No.2, under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act'). In addition, the petitioner seeks quashing of the:- (i) order dated 02.07.2021, whereby, the learned Magistrate concerned has summoned him in the complaint (supra); and (ii) order dated 12.12.2023, whereby, the learned Magistrate concerned has served notice of accusation upon him.

2. Before penning down any opinion, thus adjudicating the issues agitated in the instant petition, it is deemed apt to first deal with the facts of the present matter.



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3. Succinctly stated, what emerges from a perusal of the impugned complaint is that, the petitioner had, in order to discharge his legal liability arising out of a compromise executed between him and the respondent No.2, issued a Cheque bearing No.002099 dated 16.03.2021, for ₹60,00,000/-, drawn on Corporation Bank, Branch Charkhi Dadri, to the respondent No.2. However, upon the said cheque becoming presented in the bank concerned for encashment, it was dishonoured for the reason “Account Blocked” and resultantly, it was returned unpaid vide return memo dated 18.03.2021. Consequently, the respondent No.2 served a legal notice dated 12.04.2021 upon the petitioner, thereby requesting the latter to make payment of the cheque amount. However, instead of making payment of the cheque amount, the petitioner sent a reply dated 19.04.2021 to the legal notice, thereby claiming the said legal notice to be anchored on wrong facts.

4. Ultimately, the respondent No.2 filed the impugned complaint under Section 138 of the N.I. Act against the petitioner and examined himself as CW1, whereupon, the learned Magistrate concerned, vide order dated 02.07.2021, summoned the petitioner. Thereafter, notice of accusation was also served upon the petitioner vide order dated 12.12.2023.

5. For ready reference, the relevant extract of the impugned complaint is reproduced hereinafter:-

“1. That accused had entered into an agreement with complainant for sale of land measuring i.e. 0 Kanal- 13¼ Marla (400 Sq yards) 53/3360 share, Khewat No. 2169, Khatoni No. 2308 out of land measuring 42K-0M, situated at City Dadri, Tehsil and Distt Charkhi Dadri, (and accused become owner and possessor of the above mentioned land on the basis of agreement to sell with Smt. Bimla Devi W/o Jagdish Parsad S/o Chain Sukh and Smt. Sunita W/o Radha Kishan



and Mamta Devi W/o Parveen Kumar residents of Ward No. 10 Charkhi Dadri Tehsil & Distt Charkhi Dadri) with a total sale consideration of Rs. 50,10,000/- (Fifty Lacs ten thousand) on dt.25-10-2012. Accused have received Rs. 50,00,000/-(Fifty lacs) as earnest money from complainant in the presence of witnesses on the same day and Rs.10,000/- (Ten Thousand) will be taken at the time of execution of Sale deed mentioned in the agreement. It was further agreed that accused will execute the Sale deed in favour of complainant or any other person nominated by complainant at any time. It was further agreed between accused and complainant that if accused refuses to execute the Sale deed then complainant would have right to get it executed with the help of the Court to file the specific performance suit of agreement and accused would have no objection and accused would also liable of entire expenses. It was further agreed that legal heirs of the parties would be bound also. Photo copy of agreement is attached.

2. That complainant wanted to settle the above matter with accused the addressee because a specific performance case is already pending in between accused and complainant in the court at Charkhi Dadri. So in this regard complainant met to accused in respect of settlement of the present matter and in view of the above despite executing the sale deed in favour of complainant accused agree to repay the above amount with interest @ 1% p.a. to the complainant, the amount became one crore fifty thousand (Rs. 50 lacs + interest Rs. 55,50,000/- from 25-10-2012 upto 16-03-2021 i.e. $50,00,000 \times 101 \times 1 = 50,50,000/-$) and for discharge of accused's pre existing legal liabilities, accused have issued a Cheque No. 002099 of Rs. 60 Lacs dt.16 March 2021 of Corporation Bank Branch Charkhi Dadri to complainant and further remaining payment of Rs.40,50,000/- (forty lacs fifty thousand) accused promised to repay to complainant after two months. It is pertinent to mentioned here that accused the addressee after taking original agreement of above land i.e. dt.25-10-2012, issued the cheque of Rs.60 Lacs to the complainant. Original cheque is attached.

3. That complainant presented the above said Cheque issued by accused in his account bearing No. 19681530002691 in the HDFC Bank at Branch Charkhi Dadri. But this cheque was bounced/dishonoured due to reason "Account Blocked" and due to this reason original

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Cheque alongwith return memo dated 18-03-2021 was returned unpaid to the banker of the complainant. Memo attached.

4. That dishonor of the said Cheque in the aforesaid manner clearly reflects accused's unpragmatic approach in the matter and accused have intentionally and malafidely cheated to complainant and grabbed Rs. 60 Lacs from complainant and issued the above said Cheque only to defraud with complainant and thereby committed the offence under section 138 of Negotiable Instrument Act 1881 as amended upto date.....”

6. The learned counsel for the petitioner, in his beseeching for grant of the hereinabove extracted reliefs, submits that neither the compromise deed, in pursuance whereof the dishonoured cheque is alleged to have been issued by the petitioner in favour of the respondent No.2, nor the agreement to sell dated 16.03.2018, nor the Civil Suit No.698 of 2020, wherein compromise was allegedly effected, have been enclosed with the impugned complaint. In fact, the respondent No.2 has only annexed the photocopy of an agreement to sell dated 25.10.2012, which is denied by the petitioner for the reason of its being a fabricated document. Moreover, no suit for specific performance of this agreement has yet been filed by the respondent No.2.

7. Concluding his submissions, the learned counsel for the petitioner submits that, even as per the case set up by the respondent No.2, there can be no legally enforceable debt against the petitioner, inasmuch as, the alleged compromise was effected between the parties so that the respondent No.2 could withdraw the Civil Suit No.698 of 2020, however, neither the said suit has been withdrawn, nor the alleged compromise deed has been produced on record. Therefore, *prima facie*, there is no case made out against the petitioner.

8. *Per contra*, the learned State counsel and the learned counsel for



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the respondent No.2 have vociferously opposed the submissions made by the learned counsel for the petitioner, on the ground that, all these pleas are disputed questions of facts, which can only be adjudicated by the learned trial Court, after appreciation of evidence, which is yet to become adduced before it.

9. This Court has heard the submissions made by the learned counsels for the contesting litigants and also perused the record, but, is of the view that there is no merit in the instant petition. The reason for forming this inference is that the pleas/issues raised by the petitioner before this Court are disputed questions of facts, which cannot be appreciated and adjudicated in the instant proceedings instituted under Section 482 of the Cr.P.C.

10. Moreover, the petitioner has nowhere disputed the genuineness of his signatures on the dishonoured cheque, rather has come up with a bald plea that the respondent No.2 had managed to get the disputed undated blank signed cheque from one deed writer by misrepresentation and in an unauthorized manner. However, to the considered mind of this Court, such a bald plea cannot be readily and naively accepted by this Court at this stage, as the same is purely a defence of the petitioner, which can be appreciated only by the learned trial Court, at an appropriate stage of trial. Moreover, once there is no dispute with regard to existence of *bona fide* signatures on the dishonoured cheque, the presumption in law as provided under Section 118(a) and Section 139 of the N.I. Act gets invoked and it is for the petitioner to rebut the same during trial by leading cogent evidence.

11. Gainful reference in this regard can be made to “*K.N. Beena vs. Muniyappan and Another*”, (2001) 8 SCC 458, wherein the Hon’ble Supreme



Court has held that *“in view of the provisions of Section 139 of the N.I. Act read with Section 118 thereof, the Court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability.”*

12. In the case of **“Maruti Udyog Ltd. v. Narender”, 1999(1) SCC 113**, the Hon'ble Supreme Court has held that *“In view of the express provision of Section 139 of the N.I. Act, a presumption must be drawn that the holder of the cheque received the cheque, of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved. Therefore, the High Court was not justified in entertaining and accepting the plea of the accused-respondent at the initial stage of the proceedings and quashing the complaints filed by the appellant.”*

13. Moreover, the Hon'ble Supreme Court has at paragraph 26 of the verdict rendered in the case of **“Rangappa v. Sri Mohan”, (2010) 11 SCC 441**, observed as under:-

“26.... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability..... As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.”

14. In summa, this Court refrains from exercising its jurisdiction under Section 482 of the Cr.P.C. at this stage, however, liberty is reserved to the



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petitioner to raise all the pleas and claims, as raised herein, before the learned trial Court at an appropriate stage. Consequently, the instant petition is **dismissed**.

15. Pending application(s), if any, stand disposed of accordingly.

May 03, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No