

CRM-M-12415-2024
Date of decision: 11.03.2024

Sachin DalalPetitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nikhil Kaushik, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.0036 dated 23.01.2023 under Sections 406/420/120-B of IPC registered at Police Station Badshahpur District Gurugram (Annexure P-1) and final report dated 31.10.2023 (Annexure P-2).

Learned counsel for the petitioner *inter alia* contends that petitioner has only received two cheques dated 19.01.2022 and 16.01.2022 in favour of M/s KSD Buildtech Private Ltd. The petitioner is the Director of M/s KSD Buildtech Private Ltd. and the amount received through these two cheques have been refunded to the complainant/respondent No.4 and he relies upon Annexure P-6 i.e. the account statement and with regard to the cash receipt of Rs.9,52,000/- and as per the case of the prosecution against the aforesaid amount, a receipt was issued by Infobirth. It is further contended that petitioner has absolutely no concern with the aforesaid firm and the fourth payment allegedly made on 06.03.2022 to the petitioner of Rs.5,43,000/- was in cash in

the name of one, Babli Kumar. As such, the petitioner cannot be held liable for the offences as alleged in the FIR. Moreover, Vijay Kumar s/o Shiv Kumar has made a statement under Section 161 Cr.P.C. that no receipt was given to respondent No.6-Achal Rohatagi in his presence when the amount of Rs.9,52,000/- in cash was received. He further contends that he has no concern with the person named as Achal Rohatagi and petitioner has also moved a complaint under Section 156 (3) of Cr.P.C. before the concerned jurisdictional Magistrate against Achal Rohatagi for fabricating receipts on behalf of the M/s KSD Buildtech (Annexure P-11).

Having heard learned counsel for the petitioner, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The disputed facts cannot be determined by this Court on the basis of probable defence set up by the petitioner in the present petition. It is a settled law that disputed question of facts can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C., cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem.

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 pretrial 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. 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 Ltd v. M.A. Abida' (2015) 11 SCC 776, speaking through Justice Dipak Misra, 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."

In view of the aforesaid facts and circumstances, this Court finds no merit in the arguments raised by learned counsel for the petitioner and, thus being devoid of merits, the present petition is dismissed.

Needless to say, that the learned trial Court shall decide the present complaint in accordance with law and on its own merits, without being influenced by any of the observations made by this Court in the present order.

However, the petitioner would be at liberty to raise all the pleas before the learned trial Court at the appropriate stage.

(HARPREET SINGH BRAR)
JUDGE

11.03.2024
Neha

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