



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-12514-2023 (O&M)

Date of decision: 04.11.2024

Mandeep Singh

.....Petitioner

Versus

Kulwinder Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. P.S. Hundal, Sr. Advocate with
Mr. G.S. Hundal, Advocate for the petitioner.

Mr. R.M. Sharma, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 482 of the Cr.P.C. for quashing of Complaint No.106/2022 under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') dated 11.03.2022 (Annexure P-1) and summoning order dated 04.04.2022 (Annexure P-2), whereby the petitioner has been summoned to face trial.

2. Learned senior counsel for the petitioner contends that the learned Trial Court has erroneously issued summons against the petitioner despite the absence of essential ingredients required to invoke the mischief of offence under Section 138 of the NI Act. While drawing the attention of this Court to the complaint in question (Annexure P-1), learned senior counsel submits that the complainant has presented a misleading account in paragraph 3, alleging that the loan was advanced by her father. However, in reality, learned senior



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counsel asserts that the petitioner obtained the loan from Sakattar Singh, brother of the complainant, through a joint account held with their now-deceased father, Balbir Singh.

3. Learned senior counsel, while drawing the attention of this Court to Annexures P-5 and P-6, further submits that a perusal of the same reveal that the cheque reflecting the loan was issued solely by the brother of the complainant, which therefore, reinforces the argument that there exists no legally enforceable debt or liability towards the complainant. Learned senior counsel also points out that, according to the complaint, the complainant had already received Rs.22,63,000/- from the total loan of Rs.28 lakhs, leaving a balance of only Rs.5,37,000/-. It is argued that even if this balance does not constitute a legally enforceable liability in favour of the complainant, as the loan was given by her brother, who has not filed any case against the petitioner.

4. Additionally, learned senior counsel submits that the complaint is not maintainable in the absence of a succession certificate, probate, or letters of administration from other legal heirs, without which the complainant alone cannot file the case. It is contended that no outstanding debt or liability remains towards Balbir Singh, the deceased father of the complainant, and therefore, the complaint which has been filed solely by the respondent-complainant deserves to be dismissed on this ground alone.

5. On a pointed query posed to the learned senior counsel for the petitioner whether the petitioner disputes the signatures on the



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cheque in question, the learned senior counsel has answered in the negative. Nevertheless, it is submitted that Sakattar Singh, the brother of the complainant, did not return a blank signed cheque provided by the petitioner solely as a security measure. It has been asserted that this cheque was not returned as Sakattar Singh moved to Canada, and the complainant has, therefore, misused this security cheque by filling in an amount of Rs.38.08 lakhs.

6. Per contra, learned counsel appearing for the respondent-complainant while vehemently opposing the submissions made by learned senior counsel for the petitioner, argues that the cheque in question was issued by the petitioner in favour of Kulwinder Kaur, i.e. the complainant, to settle the liabilities arising from a loan that the petitioner had taken from Balbir Singh, father of the respondent, after his death. Learned counsel has argued that the cheque was neither issued in favour of Balbir Singh nor any other legal heirs of the deceased. Moreover, the other legal heirs of Balbir Singh have executed a Power of Attorney in favour of complainant Kulwinder Kaur, signifying their consent to her pursuing the present matter. In support, attention of this Court has been drawn to Annexures R-1 and R-2. Learned counsel for the respondent-complainant has also contended that, given the admission by the petitioner regarding his signatures on the cheque, a presumption under Section 139 of the NI Act arises in favour of the complainant, which can only be rebutted by the petitioner during trial. A prayer has, therefore, been made for dismissal of the instant petition.



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7. I have heard learned counsel for the parties and perused the relevant material on record.

8. No doubt, Section 482 of the Cr.P.C./528 of the BNSS has bestowed wide ranging extraordinary powers upon this Court, however, these powers must be exercised sparingly and with great caution. At this preliminary stage, the Court is not required to delve into the defences of the accused or to evaluate the truthfulness of the allegations in the complaint. The focus of the Court at this point is limited to determining whether a *prima facie* case is made against the accused.

9. Hon'ble the Supreme Court has repeatedly cautioned against quashing complaints at pre-trial stage, especially when factual disputes exist between the parties. Hon'ble the Supreme Court in ***Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) and another : 2022(2) RCR (Crl.) 871***, has categorically stated that premature termination of criminal proceedings can have severe and irreversible consequences. It would be pertinent to reproduce the relevant extract of ***Rathish Babu Unnikrishnan's case (supra)***, which reads as under:-

“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

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



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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.”

10. Adverting to the present case, the petitioner has raised various issues, particularly the alleged absence of a legally enforceable debt or liability towards the complainant at the time of presentation of the cheque. The respondent, on the other hand, however, has strongly disputed these contentions. Notably, learned senior counsel for the petitioner has acknowledged both his signature on the cheque and the existence of a dispute regarding the claims made in the complaint in question. Thus, this dispute can only be resolved by the parties while leading evidence before the learned Trial Court. Consequently, this Court is not inclined to intervene at this stage, much less examine the veracity of the allegations made by the respondent-complainant in the complaint. The instant petition stands dismissed accordingly.

11. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

12. Pending applications, if any, stand disposed of.

04.11.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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