

CRM-M-12186-2024
Date of decision: 07.03.2024

Gurdeep KatochPetitioner

Versus

Harminder Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arun Takhi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned complaint bearing NACT No.765 of 24.12.2020 titled as 'Harminster Singh Vs. Gurdeep Katoch' pending in the Court of learned Judicial Magistrate 1st Class, Hoshiarpur (Annexure P-2) and also to quash the impugned summoning order dated 28.09.2021 passed by the learned Judicial Magistrate 1st Class, Hoshiarpur (Annexure P-3).

Learned counsel for the petitioner *inter alia* contends that no legally enforceable debt is there to make the petitioner liable for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The agreement to sell is void *ab initio* as respondent who claim to be the GPA of his brother-Hardev Singh was not the owner of the land at the time of agreement to sell and the mutation of that was not sanctioned. He further relies upon the judgment of the Kerala High Court passed in 'J Daniel Vs. State of Kerala and another' 2005(4) R.C.R. (Criminal) 952 and the judgment of the Karnataka High Court passed in 'Venkatesh Bhat, A Vs. Rohidas Shenoy' 2010 (3) R.C.R.

(Criminal) 107.

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

07.03.2024
Neha

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