119 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) CRM-M-12710-2024
Reserved On: 14.03.2024
Decided on: 21.03.2024

Yogesh Tyagi ....Petitioner

Versus

State of Haryana and another ...Respondents

2) CRM-M-12811-2024

Yogesh Tyagi ....Petitioner

Versus

State of Haryana and another ...Respondents

3) CRM-M-12891-2024

Yogesh Tyagi ....Petitioner

Versus

State of Haryana and another ...Respondents

4) CRM-M-12913-2024

Yogesh Tyagi ....Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shiv Bhatt, Advocate and
Mr. Lalit Kumar Yadav, Advocate
for the petitioner.

HARPREET SINGH BRAR, J.

1. This order of mine shall dispose of all four above-mentioned petitions filed under Section 482 Cr.P.C. seeking quashing of four complaints filed under Section 138 of the Negotiable Instruments Act, 1881, respectively as they arise out of the same factual background/transaction.

For the sake brevity, the facts are being taken from CRM-M-12710-2024.

2. The petitioner has approached this Court by filing present petition bearing no. CRM-M-12710-2024 under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No. NACT-138 of 2016 dated 30.01.2016 (Old complaint no.235 of 2015) (Annexure P-3) filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as NI Act) and all consequent proceedings pending before learned Chief Judicial Magistrate, Gurugram, Haryana.

FACTUAL MATRIX

3. The facts, in brief, are that respondent no.2-complainant namely Rajeev Singh has filed four complaints against the petitioner-accused under Section 138 of the NI Act, including the complaint (supra), wherein, he has alleged that the petitioner had approached him August 31, 2013, through a common friend namely C.B. Pandey, seeking a friendly loan of Rs.75,00,000/-. The complainant, upon receiving assurance from the petitioner that the said amount including interest would be repaid within six months, transferred an amount of Rs.75,00,000/- to the concerned bank account of the petitioner by way of RTGS. Subsequently, an agreement reflecting the terms of the aforesaid loan was executed by the petitioner with the complainant. Further, a Promissory

Note, Receipt for the payment of the said amount, letter waiving the right of the petitioner to take advantage of any default and other related documents were also executed on the same day. As a security, the petitioner also deposited the title deed and other related documents of his property bearing House No.1/9866, Gali No.1, West Gorakh Park, Shahdra, Delhi-110032 with the complainant. Thereafter, the petitioner failed to repay the loan amount within the agreed time period and made a request on 05.03.2014 for extension of the payback period. Subsequently, an agreement dated 06.03.2014 was executed between them with same conditions of payment of interest. Thereafter, in order to discharge his legal liability, the petitioner issued several cheques, the details of which are as follows: -

	Complaint No.	Regarding cheque No.	Cheque amount	Return memo/Remarks	Legal notice
1.	235 of 2015 dated 30.01.2016 (CRM-M-12710-2024)	361333 dated 05.11.2014 & 361340 dated 05.11.2014	Rs. 21,00,000/- & Rs.83,662/-	22.01.2015/ Account Closed	10.02.2015
2.	116 of 2015 dated 30.01.2016 (CRM-M-12811-2024)	361331 dated 10.09.2014 & 361337 dated 05.09.2014 & 361338 dated 05.10.2014	Rs. 18,00,000/- & Rs.2,09,662/- & 1,47,734/-	20.11.2014/ Account Closed	16.09.2014
3.	1025 of 2014 dated 03.02.2016 (CRM-M-12891-2024)	361334 dated 10.06.2014 & 361335 dated 05.07.2014	Rs. 13,12,500/- & Rs.2,62,500/-	05.09.2014/ Account Closed	16.09.2014
4.	1024 of 2014 dated 03.02.2016 (CRM-M-	361330 dated 10.08.2014 & 361336 dated 05.08.2014	Rs. 18,00,000/- & Rs.2,62,500/-	05.09.2014/ Account Closed	16.09.2014

	12913-2024)				

CONTENTIONS

4. Learned counsel for the petitioner, at the outset, contends that the abovementioned complaints are liable to be dismissed on the ground that the matter does not involve a legally enforceable debt since respondent no.2-complainant has admitted that neither does he possess a valid license to do money lending business under the provisions of The Punjab Registration of Money-lenders Act, 1938 (as applicable to the State of Haryana and Delhi) nor does he have any notification in his favour for the deposit of title deeds/mortgage as per the provisions of Section 58(f) of Transfer of Property Act, 1882. He further submits that the loan was advanced to the petitioner at an interest rate of 42% per annum which is in no way a friendly loan as alleged by the complainant and thus, cannot be a legally enforceable agreement. In order to support this argument, learned counsel for the petitioner has placed on record a catena of judgements rendered in the cases of **Prajan Kumar Jain vs. Ravi Malhotra, (2010) 2 CivilLJ 672; Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and Another, (2023) 1 RCR(Criminal) 408; Manjit Kaur vs. Vanita, (2010) 3 RCR(Civil) 693; Smt. Nanda Nandanwar Represented through Pao Dharam Nandanwar vs. Nandkishor Thaokar, (2010) 3 CivilLJ 786.**

5. Learned counsel for the petitioner further contends that the above-mentioned complaints have been illegally and wrongly transferred to the learned District and Sessions Judge, Gurgaon, Haryana by the learned District

and Sessions Judge, Shahdra District, Delhi vide order dated 17.12.2015 which is in contravention of Section 406 Cr.P.C. and place reliance upon the judgement rendered in **Yogesh Upadhyay and Another vs. Atlanta Limited, (2023) AIR(SC) 1151.** He also submits that the complainant has duped multiple people under the same pretext of moneylending business and consequently, multiple FIRs have been lodged against him. He further submits that all the transactions have been already settled between the petitioner and the complainant through RTGS as well as cash and the petitioner has sufficient proofs and witnesses to prove the same. It is further contended that the petitioner is not required to adduce evidence especially when the complainant has admitted that he does not have any legal and valid license to lend money as mentioned before and places reliance upon the judgment rendered in **Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54** and **M.S. Narayana Menon @ Mani vs. State of Kerala and Another, (2006) 6 SCC 39.**

ANALYSIS & OBSERVATION

6. Having heard learned counsel for the petitioner and after perusing the record, this Court finds no force in the arguments raised by the learned counsel for the petitioner as the disputed facts cannot be determined by this Court on the basis of the probable defence taken by the petitioner in the present petition. It is settled law that disputed questions of fact 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. is obligated to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of

the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

7. 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 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 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."*

8. 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."

9. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, speaking through Justice Adarsh Kumar Goel, made the following observations:-

"*17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact."*

CONCLUSION

10. In view of the aforesaid facts and circumstances, this Court finds no merit in the arguments raised by the counsel appearing for the petitioner.

11. Consequently, all petitions are dismissed being devoid of merit. Pending applications, if any, shall be disposed of accordingly.

12. Needless to say that nothing observed in this order shall be construed as an expression of opinion by this Court on the merits of the case, lest it may prejudice the outcome of the trial.

(HARPREET SINGH BRAR)
JUDGE

21.03.2024
Neha

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