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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

- 1)

CRM-M-15356-2022 (O&M)
Date of decision: 12.02.2024
- Nanak Chand Tayal and another

....Petitioners
- Versus
- Sunil Dutt Bansal

...Respondent
- 2)

CRM-M-15453-2022 (O&M)
- Nanak Chand Tayal and another

....Petitioners
- Versus
- Anil Bansal

...Respondent
- 3)

CRM-M-15535-2022 (O&M)
- Nanak Chand Tayal and another

....Petitioners
- Versus
- Purushottam Bhardwaj

...Respondent
- 4)

CRM-M-15781-2022 (O&M)
- Nanak Chand Tayal and another

....Petitioners
- Versus
- Sunil Dutt Bansal

...Respondent
- 5)

CRM-M-28605-2022 (O&M)
- Nanak Chand

....Petitioner
- Versus
- Ravi Goyal

...Respondent

6)

CRM-M-48628-2022 (O&M)

Nanak Chand Tayal and another

....Petitioners

Versus

Jai Bhagwan Bansal

...Respondent

7)

CRM-M-48650-2022 (O&M)

Nanak Chand Tayal and another

....Petitioners

Versus

Umesh Kumar Sehrawat

...Respondent

8)

CRM-M-38995-2023 (O&M)

Nanak Chand Tayal and another

....Petitioners

Versus

Varun Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamal Bahl, Advocate for
Mr. Kunal Dawar, Advocate and
Mr. Jagjot Singh, Advocate
for the petitioners (in CRM-M-15356-2022,
CRM-M-15453-2022, CRM-M-15535-2022,
CRM-M-15781-2022 & CRM-M-28605-2022).

Mr. Shivek Thakur, Advocate for
Mr. R.S. Dhull, Advocate
for the petitioners (in CRM-M-48628-2022,
CRM-M-48650-2022 & CRM-M-38995-2023).

Mr. Ram Bilas Gupta, Advocate
for the respondent (in CRM-M-15535-2022).

Mr. G.C. Shahpuri, Advocate
for the respondents (in CRM-M-15356-2022 &
CRM-M-15781-2022).

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of all five of the above-mentioned cases as they arise from the similar factual matrix. However, for the sake of brevity, facts are culled out from CRM-M-15356-2022.

2. The present petition is preferred under Section 482 of the Cr.P.C. seeking quashing of complaint no. NACT-11028 of 2018 dated 17.12.2018 titled '*Sunil Dutt Bansal v. SRS Buildmart Pvt. Ltd and ors*' (Annexure P-1) under Sections 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act') and all subsequent proceedings arising therefrom including summoning order dated 23.12.2021 passed by learned Judicial Magistrate Ist Class, Faridabad (Annexure P-3) under Section 138 of the NI Act.

FACTUAL MATRIX

3. Briefly, the facts are that petitioners are the Directors of a company named SRS Buildmart Private Limited. Allegedly, the petitioners along with other accused allured the respondent to invest money to the tune of Rs.15,42,000/- in their company. When the respondent-complainant requested them to return his principal amount (Rs.15,42,000/-) then the petitioners in order to discharge their legal liability, issued three cheques, cheque bearing No.234487 dated 15.10.2017 for Rs.2,42,000/- drawn on Union Bank of India, cheque No.419540 dated 12.07.2018 for Rs.6,50,000/- drawn on Oriental Bank of Commerce and cheque bearing No.234465 dated 21.08.2018 for Rs.6,50,000/- drawn on Oriental Bank of Commerce, in favour of the respondent. Upon presentation for encashment, all three cheques were separately dishonoured. The complaint (supra) pertains to cheque dated 21.08.2018. The said cheque was dishonoured vide memo dated 21.11.2018

with remarks ‘Funds Insufficient’. Thereafter, a legal notice was issued to the petitioners on 26.11.2018, calling upon the petitioners and other accused to pay the cheque amount, but to no avail. Aggrieved, the respondent preferred the above-mentioned complaint.

4. On finding a prima facie case against petitioners, learned JMIC, Faridabad summoned them to face trial for commission of offence under Section 138 of the NI Act, vide order dated 23.12.2021.

5. For the sake of clarity, it is apt to give certain details with respect to cheques, which were dishonoured and the summoning orders against which present petitions are filed, which are tabulated as under:-

Case No.	Complainant	Cheque No. & date	Amount of cheque (Rs).	Date of dishonour	Remarks	Date of Summoning order
CRM-M-15356-2022	Sunil Dutt Bansal	234465 dated 21.08.2018	6,50,000/-	21.11.2018	Funds Insufficient	23.12.2021
CRM-M-15453 of 2022	Anil Bansal	420053 dated 19.07.2018	6,45,000/-	10.10.2018	Exceed Arrangement	23.12.2021
CRM-M-15535 of 2022	Purushottam Bhardwaj	419758 dated 08.07.2018	5,70,180/-	16.07.2018	Funds Insufficient	03.02.2022
CRM-M No.15781of 2022	Sunil Dutt Bansal	419540 dated 12.07.2018	6,50,000/-	10.10.2018	Exceed Arrangement	23.12.2021
CRM-M-28605 of 2022	Ravi Goyal	233996 dated 16.11.2020	4,32,000/-	04.03.2021	Refer to Drawer	28.03.2022
CRM-M-48628-2022	Jai Bhagwan Bansal	419449 dated 21.10.2017	2,42,000/-	26.12.2017	Funds Insufficient	12.05.2022
CRM-M-48650-2022	Umesh Kumar Sehrawat	419350 dated 22.01.2018	3,69,000/-	21.04.2018	Payment Stopped by drawer	04.06.2022
CRM-M-38995-2022	Varun Gupta	417963 dated 11.07.2018	6,45,000/-	28.08.2018	Funds Insufficient	15.12.2022

CONTENTIONS

6. Learned counsel for the petitioners *inter alia* contended that the respondent-complainant has mischievously filed the above-mentioned

complaint without complying with the directions issued by this Court in **Anil Chanana vs. M/s Gyani Ram Ruliya Ram, CRM-M-36869-2018** decided on 30.10.2018 as well as the directions issued by Delhi High Court in **Sudeep Jain vs. M/s ECE Industries Ltd., CRL.M.C.1821/2013** decided on 06.05.2013. It is further submitted that it was incumbent upon the respondent to file Form No.32 along with the said complaint (supra) to indicate whether the petitioners could be held liable for any offence under Section 138 NI Act. To support his contentions, learned counsel for the petitioners further places reliance upon the judgements rendered by the Hon'ble Supreme Court as well as by this Court in ***Ajay Aggarwal Vs. M/s Integrated Finance Company Limited, Criminal Appeal Nos.586-594 of 2018*** decided on 28.04.2018; ***Ashoke Mal Bafna Vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd. 2017 AIR (SC) 2854***; ***Harshendra Kumar D. Vs. Rebatilata Koley etc. (2011) 3 SCC 351***; ***Pooja Ravinder Devidasani Vs. State of Maharashtra and another 2015 (1) RCR (Civil) 297***; ***Mrs. Anita Malhotra Vs. Apparel Export Promotion Council and another 2011 (4) RCR (Civil) 930*** and ***Megha Goyal and another Vs. Raj Kumar Tayal, CRM-M No.24742 of 2017; 2024:PHHC:007865***; ***Standard Chartered Bank vs. State of Maharashtra and Others Etc., Criminal Appeal Nos.271-273 of 2016 (Arising out of S.L.P(CrL) Nos. 484-486 of 2016)***; ***N.K. Wahi vs. Shekhar Singh and Ors., AIR 2007 SC 1454***.

7. Per contra, learned counsel appearing for the respondent *inter alia* contends that the present case is squarely covered by the judgment of this Court in CRM-M-41774-2022 titled as 'Nanak Chand Tayal and another Vs. Manoj Singla' filed by the present petitioners. It is further contended that it has been specifically pleaded in the complaint that the cheque in question was duly signed by an authorized signatory, i.e., the Director Sh. Devender Adhana

(accused) in presence of the other Directors (including present petitioners-accused) as well as the Chairman, as they all had knowledge of the day-to-day working of the company. He further submits that it is specifically mentioned that all the Directors including the present petitioners had assured the respondent that the cheque in question would be encashed upon its presentation.

OBSERVATION AND ANALYSIS

8. Having heard learned counsel for the parties and after perusing the record, this Court finds no force in the arguments raised by the learned counsel for the petitioners as the disputed facts, cannot be determined by this Court on the basis of the probable defence taken by the petitioners 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.

9. The Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan (2023) 10 SCC 685*** has categorically held that the Court should not interfere at the instance of the accused in a complaint under Section 138 of the NI Act unless it comes across some unimpeachable and incontrovertible evidence. While setting aside the order passed by the Madras High Court whereby the High Court had quashed the criminal proceedings initiated under Section 138 of the

NI Act, the Hon'ble Supreme Court speaking through Justice J.B. Pardiwala has observed following:-

“40. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya supra are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.

46. When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner.”

(emphasis supplied)

10. 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."

11. 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."

12. 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

13. In view of the aforesaid facts and circumstances, this Court finds no merit in the arguments raised by the counsel appearing for the petitioners. Consequently, all petitions are dismissed being devoid of merit.
14. Pending applications, if any, shall be disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

12.02.2024
Neha

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