

122

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-20710-2024
Date of decision : 26.04.2024

ASHOK KUMAR YADAVPetitioner

Versus

C.P. WHOLESALE INDIA PVT. LTD.Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Chanderhas Yadav, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. impugning summoning order dated 21.10.2021 and setting aside order dated 31.01.2024 passed by JMFC, Gurugram in complaint case No.15226 of 2020 dated 09.07.2020 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the 1881 Act’).

2. The respondent filed complaint under Section 138 of the 1881 Act in which the petitioner has been summoned to face summary trial vide order dated 21.10.2021. Further in compliance of Section 143-A interim compensation has been awarded against the petitioner and he has been ordered to deposit 20% of the cheque amount.

3. Counsel appearing for the petitioner while assailing the summoning order as well as complaint submits that so far as statutory presumption as provided under Sections 118 and 139 of the 1881 Act is

concerned, that is not attached to legally enforceable debt. He submits that the complainant has merely relied upon ledger account to impress upon the Trial Court that there is a legally enforceable debt recoverable from the petitioner. The same is not sufficient. It has been contended that in the absence of there being invoices and delivery of the material, the presumption cannot be raised to proceed against the petitioner. He thus submits that it is a case wherein this Court should exercise jurisdiction under Section 482 of the Code to quash the complaint as well as subsequent proceedings.

4. I have heard counsel for the petitioner and have carefully gone through records of the case.

5. In the considered opinion of this Court the plea raised by counsel for the petitioner is misconceived. In order to appreciate the plea, it will be apt to peruse the bare provisions as contained under Sections 118 and 139 of the 1881 Act. The same read as under:

“118. Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—

(a) **of consideration:**—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) **as to date:**—that every negotiable instrument bearing a date was made or drawn on such date;

(c) **as to time of acceptance:**—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer:**—that every transfer of a negotiable instrument was made before its maturity;

(e) **as to order of indorsements:**—that the indorsements

appearing upon a negotiable instrument were made in the order in which they appear then on;

(f) **as to stamp:**— that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) **that holder is a holder in due course:**—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

6. Section 118 is part of Chapter XIII which deals with Special Rules of Evidence and the same is subject to proof. Meaning thereby that such presumption needs to be rebutted during the course of evidence and as per the dictum of Section 118 the presumption is w.r.t. consideration, date, time of acceptance, time of transfer, order of endorsement, stamp and that the holder of the negotiable instruments is holder in due course. Section 139 is part of Chapter XVII that deals with penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts, which again is subject to the contrary being proof but provides that presumption is in favour of the holder that the Negotiable Instruments Act has been issued in discharge, in whole or in part of any debt or other liability. Statute raises presumption in favour of the holder in due course. It needs

to be rebutted during the course of trial. Same is the mandate of law laid down by Three-Judge Bench of Supreme Court in **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441**, wherein it has been held as under :

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

7. The aforesaid law stated in *Rangappa's* case supra was reiterated by Apex Court in **S. Natarajan vs. Sama Dharman (2021) 6 SCC 413** to observe as under:

“9. In **Rangappa v. Sri Mohan, 2010(3) RCR (Criminal) 164 : 2010(3) RCR (Civil) 197; 2010(3) Recent Apex Judgments (R.A.J.) 415 : (2010) 11 SCC 441**, the legal question before this Court pertained to the proper interpretation of Section 139 of the NI Act which shifts the burden of proof on to the accused in cheque bouncing cases. This Court observed that the presumption mandated by Section 139 of the NI Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. This Court further observed that Section 139 of the NI Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. This Court clarified that the reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. This Court, then, explained the manner in which this statutory presumption can be rebutted. Thus, in cheque bouncing cases, the initial presumption incorporated in Section 139 of the NI Act favours the complainant and the accused can rebut the said presumption and discharge the reverse onus by adducing evidence.”

8. Dictum of law in *Rangappa's* case was further relied upon in **Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458** wherein it was held as under:

“13. Crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While

approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court.

14. In *Balaji Seafoods (supra)*, the High Court noted that the cheque was not handed over with the intention of discharging the subsisting liability or debt. There is, thus, no similarity in the facts of that case simply because in that case also loan was advanced. It was noticed specifically therein - as was the admitted case of the parties - that the cheque was issued as "security" for the advance and was not intended to be in discharge of the liability, as in the present case.

15. In *HMT Watches Ltd. v. M.A. Abida, 2015(2) RCR (Criminal) 366 : 2015(2) RCR (Civil) 497 : 2015(2) Recent Apex Judgments (R.A.J.) 296 : (2015) 11 SCC 776* relied upon on behalf of the respondent, this Court dealt with the contention that the proceedings under Section 138 were liable to be quashed as the cheques were given as "security" as per defence of the accused. Negating the contention, this Court held:-

"10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. 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. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplined with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under

section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. In *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd. [2008(1) RCR (Criminal) 652 : 2008(1) Recent Apex Judgments (R.A.J.) 183 : (2008) 13 SCC 678]*, this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22)

"17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the wellknown legal principles involved in the matter.

* * *

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practise; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. In *Rallis India Ltd. v. Poduru Vidya Bhushan [2011(4) RCR (Criminal) 723 : 2012(1) RCR (Civil) 14 : 2011(6) Recent Apex*

Judgments (R.A.J.) 3 : (2011) 13 SCC 88], this Court expressed its views on this point as under: (SCC p. 93, para 12)

"12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm."

16. We are in respectful agreement with the above observations.
xxx

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.

18. In **Rangappa v. Sri Mohan, 2010(3) RCR (Criminal) 164 : 2010(3) RCR (Civil) 197 : 2010(3) Recent Apex Judgments (R.A.J.) 415 : (2010) 11 SCC 441** this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post dated cheque is a well recognised mode of payment *Goaplast (P) Ltd. v. Chico Ursula D' Souza 2003(2) RCR (Criminal) 131 : (2003) 3 SCC 232.*"

9. Furthermore, the discrepancy of the evidence which is being canvassed before this Court is not the scope at this stage. At the stage of issuance of process Court is only to apply its mind to the contents of the

complaint. At this stage test is 'prima facie case to proceed'. The Court is not required to record satisfaction regarding sufficiency of evidence to convict the accused.

10. Scope of exercising jurisdiction under Section 482 Cr.P.C. to quash the proceedings at this stage is also no more *res integra*. In somewhat similar circumstances, Supreme Court in the case of **M/s Modi Cements Ltd. vs. Kuchil Kumar Nandi, (1998) 3 SCC 249** held as under :

“21. It is needless to emphasise that the Court taking cognisance of the complaint under Section 138 of the Act is required to be satisfied as to whether a prima facie case is made out under the said provision. The drawer of the cheque undoubtedly gets an opportunity under Section 139 of the Act to rebut the presumption at the trial. It is for this reason we are of the considered opinion that the complaints of the appellant could not have been dismissed by the High Court at the threshold.”

11. Almost similar view was expressed by the Apex Court in the case of **Maruti Udyog vs. Narender, (1991) SCC 113** wherein it was observed as under:

“2. In view of the express provision of Section 139 of the Negotiable Instruments Act, 1881, a presumption must be drawn that the holder of the cheque received the cheque, of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved. Therefore, the High Court was not justified in entertaining and accepting the plea of the accused-respondent at the initial stage of the proceedings and quashing the complaints filed by the appellant. xxx”

12. Apex Court further held that while exercising jurisdiction under Section 482 Cr.P.C. High Court cannot embark on a virtual trial. Reference

can be made to **Alka Bapu Gund vs. Prakash Kanhaiyalal Kankaria and others, (2017) 11 SCC 108** wherein Apex Court held as under :

“5. The High Court in the impugned judgment seems to have embarked on a virtual trial of the case though it was entertaining an application under Section 482 Cr.P.C./Article 227 of the Constitution of India for quashing of the order taking cognisance and the complaint as a whole. The probity of the evidence tendered by the complainant's witnesses prior to issuance of process was even gone into by the High Court.

6. Having regard to the settled principles of law, we do not consider the approach of the High Court to be correct in law. At the stage at which the case was poised for consideration, it was beyond the jurisdiction of the High Court to have embarked upon the exercise that was undertaken. As the same appears to be in clear excess of jurisdiction, we set aside the order of the High Court and direct that the complaint proceedings against the accused respondents be continued from the stage where the same was interdicted.”

13. Interplay of statutory presumption under Section 139 of N.I. Act and jurisdiction of High Court under Section 482 Cr.P.C. was further discussed by Supreme Court in **Rajeshbhai Muljibhai Patel and others vs. State of Gujarat and another, (2020) 3 SCC 794** holding as under -

“20. The High Court, in our view, erred in quashing the criminal case in C.C.No.367/2016 filed by appellant No.3-Hasmukhbhai under section 138 of N.I. Act. As pointed out earlier, Yogeshbhai has admitted the issuance of cheques. When once the issuance of cheque is admitted/established, the presumption would arise under section 139 of the N.I. Act in favour of the holder of cheque that is the complainant-appellant No.3. The nature of presumptions under section 139 of the N.I. Act and section 118(a) of the Indian Evidence Act are rebuttable. Yogeshbhai has of course, raised the

defence that there is no illegally enforceable debt and he issued the cheques to help appellant No.3- Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the presumption under section 139 of N.I. Act will continue to remain. It is for Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C., 1973. Though, the Court has the power to quash the criminal complaint filed under section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there is inter se dispute between appellant No.3 and respondent No.2. Without keeping in view the statutory presumption raised under section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C.No.367/2016 filed under section 138 of N.I. Act.”

14. From the afore-stated precedents, the legal proposition that emerges is:

1. At the time of taking cognizance, the trial Court is required to see whether there is ‘prima facie case to proceed’.
2. ‘*Prima facie* case to proceed’ connotes that the Trial Court has to apply its mind whether ingredients of Section 138 are satisfied in light of statutory presumption as contemplated under Section 118 and Section 139 of the 1881 Act.

3. Section 139 is quintessential a reverse onus clause and the presumption provided therein needs to be rebutted by the accused. Such rebuttal is matter of trial.

4. Jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is of wide amplitude. However, a great deal of caution is also required in its exercise. The same is governed by well known legal principles laid down by Supreme Court in the matter of **State of Haryana v. Bhajan Lal, 1991(1) RCR (Criminal) 383.**

5. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. High Court would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused.

6. At the stage of issuance of process, High Court while exercising jurisdiction under Section 482 of the Code would not embark upon virtual trial.

15. In the considered opinion of this Court, the case of the petitioner when gazed from the prism of afore-stated legal proposition, the

complaint cannot be foreclosed at this nascent stage holding that the evidence relied upon by the complainant is not sufficient. Statutory presumption as contemplated under Section 139 of 1881 Act needs to be rebutted by the petitioner/accused. Whether the petitioner will be able to rebut the same can't be analyzed at this stage being the matter of trial.

16. Counsel for the petitioner has raised another strange plea saying that the issue cannot be adjudicated in summary proceedings. Strangely if the plea is that the issue cannot be adjudicated upon in the summary trial, this Court wonders as to how the same can be adjudicated while dealing with petition filed under Section 482 of the Code.

17. Resultantly, the present petition is dismissed.

April 26, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes