



230 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-26467-2021 (O&M)

Date of Decision: 19.09.2024

KAILASH CHAND

...Petitioner

V/S

UNION TERRITORY AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anil Kumar Bhardwaj, Advocate with
Mr. Kuldeep Sharma, Advocate for the petitioner.

Mr. J.S. Toor, Addl. PP UT Chandigarh.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 104 dated 21.09.2017 registered under Sections 406 and 498-A of Indian Penal Code at Police Station Women Police Station, Chandigarh.

2. On 18.02.2022, following order was passed:

“Learned counsel for the petitioner, at the outset, submits that he does not press this petition on merits. However, he submits that the petitioner is keen to settle the dispute amicably with the wife. There is a possibility of amicable settlement as the complainant is residing with the petitioner. Therefore, the matter be referred to Mediation and Conciliation Centre of this Court.

Notice of motion to the limited point of settlement between the parties.

Mr. J.S. Toor, Additional Public Prosecutor, Chandigarh, accepts notice on behalf of respondent No.1-U.T., Chandigarh.

Adjourned to 28.04.2022.

Let the parties appear physically/virtually before the Mediation and Conciliation Centre, of this Court on 16.03.2022.

Learned counsel for the petitioner undertakes to serve the complainant and tell her about the date fixed before the Mediation and Conciliation Centre of this Court.

Dasti notice be also issued for service of respondent No.

2.”



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3. On 18.02.2022, learned counsel for the petitioner submitted that he is not pressing this petition on merits, however, the petitioner is keen to settle the dispute amicable with his wife and as such, notice of motion was issued on the limited point of settlement between the parties and learned counsel for the petitioner had undertaken to serve the complainant and inform her about the date fixed before the Mediation and Conciliation Centre of this Court.

4. Thereafter, on 17.10.2023, the case was adjourned as according to office report notice to respondent No. 2 could not be issued for want of process fee and petition was directed to deposit the process fee within a period of one week. However, perusal of office report indicates that process fee has not been filed till date and request for adjournment has been made on behalf of the petitioner.

5. Per contra, learned State counsel submits that disputed question of facts raised in the present petition can only be appreciated by the learned Court on the basis of evidence added by the parties and trial of the case has made substantial progress as 05 prosecution witnesses, out of total 12, have already been examined.

6. Having heard learned counsel for the parties and after perusing the record of the case, this Court finds no merit in the present petition as the disputed question of facts can be determined only on the basis of the evidence led by the parties. The probable defence set up by the petitioner in the present petition cannot be appreciated at this stage.

7. 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 obliged 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.

8. 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, made the following observations: -

“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 unmerited 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.”

9. A two Judge Bench of the Hon'ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida (2015) 11 SCC 776** 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



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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.”

10. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458**, decided by the Hon’ble Supreme Court, following observations were made: -

“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.”

11. In view of the above discussion, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the trial Court. The disputed questions of fact and the probable defence of the petitioner can only be seen by the trial Court on the basis of evidence adduced by the parties.

12. Accordingly, present petition stands dismissed being bereft of any merit.

13. However, petitioner would at liberty to take all the pleas raised in the present petition at the appropriate stage during the course of trial.

(HARPREET SINGH BRAR)
JUDGE

19.09.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No