



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34118-2024
DECIDED ON: 19.07.2024

NIRAJ KUMAR SINGH

.....PETITIONER

VERSUS

THE STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashwani Kumar Antil, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS, 2023) (which has come into the force on or after 1st July, 2024) for quashing the order dated 25.03.2022 (Annexure P-1), whereby the petitioner was summoned, arising out of complaint No.NACT/456/2021 titled as Gourav Kala versus LI Digital Payments Pvt. Ltd. And others, dated 12.03.2021, under Section 138 of NI Act, 1881 and quashing of the complaint No.NACT/456/2021 which is pending before the learned trial Court (Annexure P-2).

2. It has been contended by learned counsel for the petitioner that he being a Director of LI Digital Payments Pvt. Ltd., offers mobile payment solutions to the citizens of India. To facilitate this, the company appointed distributors and agents, creating online wallets and issuing certificates. In September 2018, the complainant was registered as a Master Distributor,

Receiving a certificate and online wallet. Thereafter, the complainant paid the

company at least Rs. 1,00,000/- monthly, which was credited to their wallet.

The complainant earned commissions on digital transactions as per agreed terms and conditions.

3. He further submits that as the business grew, the complainant, a Master Distributor, paid increasing amounts to the company, which transferred equivalent funds to the complainant's wallet. By May 2019, the company had 11 distributors and 142 retailers, generating Rs. 13,89,570/- in August 2019. However, technical issues halted payment channels, and wallet access ceased.

4. It is argued that in good faith, the company issued Security Cheque No. 000362 to the complainant, ensuring refund of deposited amounts upon receipt of a No Objection Certificate (NOC) confirming no outstanding claims from 142 retailers and distributors under the complainant's purview.

5. Instead, the complainant attempted to encash the cheque for the full amount (Rs. 13,89,570/-) with malicious intent, disregarding the rights of other distributors and retailers. The company stopped payment on the cheque and requested the NOC, but the complainant threatened the petitioner and other directors, ultimately filing a complaint under Section 138 of the Negotiable Instruments Act, 1881, based on fabricated claims (Annexure P-2).

6. Heard.

7. This Court after going through the submissions and pleadings made by the petitioner would opine that, on the facts it is evident from Para No.5 of the complaint (Annexure P-2) that specific allegations against the

petitioner have been read out with the assistance of the learned counsel for the petitioner in Court which are reproduced hereinbelow as well:-

“5. That as the business grew, the accused kept on increasing the perks in order to extract more money in the account of the accused. Accordingly, the complainant, started paying more in the account of accused No.1 and the accused accordingly transferred equivalent amount in the wallet/portal of the complainant.”

8. A perusal of the aforesaid paragraph would clearly depict that it is a case where facts are being disputed on merit but no legal question has been raised in the instant petition.

9. To summarize the principles of law with regard to quashing of the entire proceedings u/S 138 of the Act, it will be relevant to take note of few judgement of Apex Court. In ***M.M.T.C. Ltd. & Anr. vs. MedchlChemicals and Pharma (P) Ltd. & Anr : (2002) 1 SCC 234***, the Apex Court has held as under:

"17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability."

10. In the case of ***Rangappa vs. Sri Mohan : (2010) 11 SCC 441***, the opinion of Justice K.G.Balakrishnan for a three judges Bench is relevant to be noted as under:

"26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does

indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a 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. However, there can be no doubt that there is an initial presumption which favours the complainant."

11. In the case of ***Rajeshbhai Muljibhai Patel vs. State of Gujarat (2020) 3 SCC 794***, it has been held by the Apex Court that whenever the facts are disputed, the truth should be allowed to emerge by weighing the evidence. The Apex Court has opined as under:

"22.When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act."

12. So far as quashing of the criminal proceedings in exercise of powers u/s 528 of the BNSS, 2023 is concerned, the judgements of the Apex Court in ***State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]***, ***Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haque : (2005) 1 SCC 122***

and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315, are the guiding factors and limbs of such powers, were the prima facie on the facts and materials available before the Court, it is found that no case as alleged is made out then such proceedings can be quashed in exercise of the powers.

13. In the case of *Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330*, the Apex Court has held as under:

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."

14. In the case of *Rathish Babu Unnikrishnan (Supra)*, the Apex Court has held as under:

"16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint."

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.*

18. *Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."*

15. From the above judgements, it is crystal clear that at the stage of summoning whether there is a legally subsisting liability or not, is not to be considered by the Magistrate. It is to be looked into during the trial and the burden to prove that there was no existing debt or liability, is on the accused/respondents, which is to be discharged during the trial. Section 139 of the Act, raises presumption that the cheque was issued for a legally existing debt and such presumption can be rebutted by the respondent/accused, during the course of the trial. At the time of exercise of jurisdiction u/s 528 of the BNSS, 2023, the Court is not required to evaluate

the truthfulness or otherwise the allegations levelled by the complainant against the accused whatever may be the defences of the accused, those defences can be examined only during the trial. Even if the accused is successful in showing some suspicion or doubt in the allegations levelled by the complainant, it would be impermissible to discharge the accused before trial. If the Magistrate is satisfied that prima facie case is made out, fulfilling all the ingredients of Section 138 of the Act. In view of the presumptions u/S 139 of the Act, such complaints cannot be quashed on the basis of the averments made by the accused with regard to his defences.

16. In the light of the aforesaid judgements of the Apex Court and the admitted fact by the petitioner that disputed question of facts is involved in the instant case without raising any legal plea, this Court deems it appropriate not to invoke its inherent powers under Section 528 of BNSS, 2023 as the same can be adjudicated on the strength of evidence which can only be lead before the trial Court. Hence, the present petition being devoid on merits stands dismissed.

19.07.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No