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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-35121 of 2024
Date of Decision: 21.11.2024

Balwinder Singh

...Petitioner

Versus

Gurdeep Bedi and another

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Vishal Mittal, Advocate
for the petitioner.

Manisha Batra, J.(Oral)

1. This petition has been filed under Section 482 of Cr.P.C. for quashing of Criminal Complaint No.COMA-4789/2018 titled as 'Gurdeep Bedi Vs. Balwinder Singh and others' filed under Section 138 of the Negotiable Instruments Act (for short as N.I. Act), pending in the Court of Judicial Magistrate Ist Class, Patiala, and all the consequential proceedings having arisen therefrom.

2. The brief facts of the case relevant for the purpose of disposal of this petition are that respondent No.1-complainant has filed the aforementioned complaint against the petitioner on the allegations that the petitioner had taken a showroom owned by him on payment of rent @ Rs.40,000/- per month by a rent agreement dated 01.04.2010. He failed to make payment of the arrears of rent and as on 01.08.2018, an amount of Rs.18,80,000/- was due towards him. To discharge his liability of payment

thereof, the petitioner issued two cheques for sums of Rs.10,00,000/- and



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Rs.7,80,000/- respectively in favour of respondent No.1. On presentation of cheque amounting to Rs.10,00,000/-, the same had been dishonoured with the remarks 'funds insufficient'. Since the petitioner failed to pay the amount due against him even after issuance of the statutory notice and within the requisite period, therefore, respondent by filing the aforementioned complaint, prayed for taking action in the matter.

3. Vide order dated 22.10.2018, the learned Magistrate had issued summons against the petitioner for commission of offence punishable under Section 138 of N.I. Act. The petitioner is presently facing trial in this complaint.

4. It is submitted by learned counsel for the petitioner that the impugned complaint and the proceedings initiated therein are liable to be quashed as this complaint had been filed by respondent No.1 with *mala fide* and by committing fraud upon the petitioner. He had advanced some loan to the petitioner and had procured some blank signed cheques as a security thereof. The said loan amount had been returned by the petitioner but by misusing the blank signed cheques and filling them, this complaint had been filed. It is argued that the cheque in question had not been issued in lieu of any legally enforceable debt and therefore, it is urged that the complaint and the proceedings initiated therein are liable to be quashed.

5. I have heard learned counsel for the petitioner at length and have perused the record.

6. The petitioner is seeking quashing of the criminal complaint filed under Section 138 of the N.I. Act by the respondent No.1-complainant.

The case of the petitioner is that the cheque in question was issued by him as

a security to the repayment of loan advanced by respondent No.1 and it was



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a blank signed cheque. It is also the plea as taken by him that the loan amount had been repaid and the cheque was not issued to discharge any legal liability. The question as to whether the complaint filed by respondent No.1 can be ordered to be quashed on the basis of factual defences taken by an accused at that stage by filing a petition for quashing of such order, has been considered by Hon'ble Apex Court in **Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) and another**, 2022 (2) R.C.R. (Criminal) 871, wherein it was observed that the burden of proving that there is no existing debt or liability, is to be discharged in the trial as there is a legal presumption of a cheque having been issued in the discharge of liability and such presumption must receive due weightage. It was held that in a situation where an accused moves Court for quashing even before trial has commenced, the approach of the Court should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. The Hon'ble Supreme Court had also referred to another case cited as **M.M.T.C. Ltd. and another v. Medchl Chemicals and Pharma (P) Ltd. and another**, (2002) 1 SCC 234, wherein it was observed that there is 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 the averments in the petition filed by the accused, the High Court should not have concluded it that there was no existing debt or liability.

7. Further, the question as to whether the High Court should take recourse to Section 482 Cr.P.C., in such like cases, was considered by

Hon'ble Supreme Court in another case cited as **Rajeshbhai Muljibhai**



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Patel v. State of Gujarat, (2020) 3 SCC 794, by observing that when disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of NI Act ought not to be quashed by the High Court by taking recourse to Section 482 Cr.P.C.

8. On applying the principles of law as laid down in the above cited cases to the present case, it has been noticed that after considering the evidence available on record in the form of preliminary evidence as adduced by the respondent No.1-complainant, the learned Magistrate passed the order dated 22.10.2018 thereby summoning the petitioner and it is discernible that the view taken by the Magistrate is possible view that cheque in question was drawn in discharge of a legally enforceable debt. As such, in the presence of such legal presumption, it is not judicious to quash the complaint and the summoning order passed by the learned Magistrate by going into the details of the allegations as levelled by the petitioner-accused or by carrying some detailed enquiry without giving opportunity to the trial Court to evaluate the evidence of the parties firstly as has been held in **Rathish Babu Unnikrishnan's** case (Supra). Undoubtedly, this Court has ample powers to quash a criminal proceeding at any stage. However, such powers are to be exercised with great circumspection and sparingly and also in rarest of rare cases. It is not expected to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations levelled in the complaint by invoking the extraordinary/inherent powers of this Court and that too at the pre trial stage since quashing of proceedings at this stage would obviously result in final adjudication of dispute between the parties without giving them opportunity to adduce evidence. More particularly,



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when there is a legal presumption that when a cheque is issued and the signatures over the same are not disputed by the accused. The balance of convenience is in favour of the complainant though obviously, the accused would certainly be given opportunity to rebut that presumption. Consequent to the discussion as made above, I have no hesitation to hold that the complaint filed by respondent No.1 and the proceedings initiated in the form of passing the impugned order by the learned Magistrate do not warrant any interference at this stage when the factual controversy between the parties is yet to be canvassed and considered by the trial Court. Accordingly, finding no reason to allow the petition, the same is dismissed.

21.11.2024
D.Bansal

(MANISHA BATRA)
JUDGE

Whether speaking/ reasoned :	Yes/ No
Whether Reportable :	Yes/ No