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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Date of decision: 27th September, 2024

Hem Raj

...Petitioner

Versus

Ubber Build Tech Private Limited and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. G.S. Sawhney, Advocate for the petitioner.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of complaint No. 2183 of 2023 titled as 'Ubber Build Tech Private Ltd. vs. Hem Raj' filed under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') which is pending before the Court of Judicial Magistrate Ist Class, Chandigarh and the order dated 15.05.2023 (Annexure P-7) whereby the present petitioner had been ordered to be summoned as an accused and had been called upon to appear and to face trial for commission of aforementioned offence.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned complaint has been filed by the respondent who is a private limited company engaged in the business of promoting/developing and sale of residential plots and flats within the



vicinity of village Khanpur, District SAS Nagar, Punjab. The present petitioner had purchased a residential plot bearing No. 181 situated in village Khanpur from the respondent-complainant for sale consideration amount of Rs. 16,86,375/-. The petitioner was under an obligation to pay a sum of Rs. 49,500/- to the respondent towards maintenance charges. To discharge its liability, the petitioner issued a cheque for the aforementioned amount in favour of the respondent with the assurance that the same would be duly encashed on the presentation of the same. However, the said cheque when presented by the respondent with its banker, was dishonored and returned with the remarks 'funds insufficient'. The respondent then issued notice to the petitioner and as the petitioner did not pay the amount of the cheque in question even thereafter, hence, the complaint was filed. After recording preliminary evidence, learned Magistrate passed the impugned order dated 15.05.2023, thereby directing the petitioner to appear as an accused before it.

3. Feeling aggrieved from the impugned order, the instant petition has been filed by the petitioner.

4. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 482 of the Code of Criminal Procedure. The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under the above mentioned Section in a case reported as *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736* which are as



follows:-

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

5. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr,P,C, for



quashing an order summoning the accused is maintainable.

6. Similarly, in a recent judgment dated 22.02.2024 titled as '*Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261*', the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

7. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 482 of Cr.P.C., however at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 482 is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

8. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent and the impugned order are liable to be quashed or not. The main thrust of the arguments address by learned counsel for the petitioner is that the cheque in question was forcibly procured by the respondent from him and that no legal notice as claimed to have been issued by the



respondent-complainant prior to filing of the complaint, had been received by him and therefore, the complaint could not be filed against him. The second argument as raised is that the provisions of Section 202 of the Code of Criminal Procedure which are mandatory in nature had not been complied with by the respondent-complainant. So far as the contention that the mandatory notice had not been properly issued or received by the petitioner and that cheque in question was forcibly procured is concerned, it may be mentioned that the petitioner has not denied his signatures on the cheque in question and his claim is that the amount of the cheque which was claimed as maintenance charges, was not payable. This contention cannot be accepted at this stage, in view of the fact that once it was not disputed that the cheque in question was issued by the petitioner then the Magistrate was to presume under Section 118-A and 139 of NI Act that this cheque was made for consideration and was issued in discharge of whole or part of any debt or liability. The standard of proof to discharge the burden of proving that the cheque in question was issued to discharge a legally enforceable debt is not as heavy as usually seen in the situation where the prosecution is required to prove the guilt of an accused. Then so far as the issuance of notice is concerned, the learned Magistrate after *prima facie* satisfying himself that there was sufficient ground for proceeding against the petitioner had issued process. He was not required to make a deeper probe at the time of issuance of process that notice has actually been received by the petitioner or not. Moreso, it is evident that this ground of challenge that has been set



up by the petitioner is matter of defence at the trial and this Court while exercising its powers under Section 482 of Cr.P.C. cannot substitute the discretion exercise by the Magistrate on this point.

9. Further as per Section 204 of the Code, if in opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance in summons/warrants case. The sine qua non for exercising the power under Section 204 of Cr.P.C. to issue process is the subjective satisfaction regarding the existence of sufficient ground for proceeding. At that stage, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the material collected is adequate for supporting the conviction. For issuance of summons under Section 204 of Cr.P.C., the expression used is “there is sufficient ground for proceeding” and detailed inquiry regarding merits/demerits is not required. Reference in this context can be made to ***Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129: (2022) 1 SCC (Cri) 401*** wherein the Hon’ble Supreme Court had observed that the test to be applied is whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. At this stage, the Court cannot test the veracity of allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the first contention of the petitioner can not be accepted.



10. Now coming to the contention that the mandatory provisions of Section 202 of the Code had not been complied with. So far as this provision is concerned, it envisages the postponement of issuance of process where the accused resides beyond the jurisdiction of the territory of the Court. Undisputedly, the petitioner being a resident of Shimla was residing outside the territory jurisdiction of the trial Magistrate. However, the submission that for want of conducting any inquiry under this provision, complaint is liable to be quashed, cannot be accepted in view of the observations made by Hon'ble Supreme Court in Re: Expeditious Trial of Cases under Section 138 of NI Act 1881, (2021) 16 SCC, wherein while considering the necessity of conducting an inquiry, it was observed that for this purpose, the Magistrate can examine the witnesses on affidavit and only in exceptional cases, he should examine the witnesses orally. The Hon'ble Supreme Court held that if the Magistrate holds the inquiry himself, he need not examine the witnesses and in suitable cases, he can examine the documents to satisfy himself about the sufficiency of grounds for proceedings under Section 202 of Cr.P.C. The relevant observations made by Hon'ble Supreme Court in this context are reproduced as under:-

10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry to decide whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-6-2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before the issuance of process, in a case where the accused resides beyond the area of



*jurisdiction of the court. (See : **Vijay Dhanuka v. Najima Mamtaj**, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479, **Abhijit Pawar v. Hemant Madhukar Nimbalkar**, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192 and **Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.**, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828) There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.*

11. The learned Amicus Curiae referred to a judgment of this Court in *K.S. Joseph v. Philips Carbon Black Ltd.*, (2016) 11 SCC 105 : (2016) 4 SCC (Civ) 616 : (2017) 1 SCC (Cri) 270 where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in *Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479, *Abhijit Pawar v. Hemant Madhukar Nimbalkar*, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192 and *Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*, (2019) 16 SCC 610 : (2020) 2



SCC (Civ) 713 : (2020) 2 SCC (Cri) 828, the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amicus Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amicus Curiae.

12. Another point that has been brought to our notice relates to the interpretation of Section 202(2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202(1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145(2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202(2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of the examination of the complainant by way of an affidavit. There is no specific provision in relation to the



examination of the witnesses also on the affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202(2) of the Code is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on the affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.”

11. The observations so made were considered by High Court of Himachal Pradesh in **CRM-M No. 271 of 2023** tilted as **Sumit Juneja vs. State of Himachal Pradesh and others**, decided on **12.01.2024** and it was held that there was no requirement for recording statement of witnesses and the Magistrate was within his jurisdiction to peruse the documents to satisfy himself while conducting an inquiry under Section 202 of Cr.P.C.

12. In view of the abovesaid discussed binding precedents of Hon’ble Supreme Court, this Court is of the opinion that Section 202 of the Code is inapplicable to complaint under Section 138 of NI Act. In the instant case, the learned Magistrate passed the impugned order after going through the cheque, notice, preliminary evidence in the form of sworn deposition of



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the respondent-complainant and documents relied upon by him, on being satisfied that there existed sufficient ground to proceed against the accused under the aforementioned Section and passed an order to summon him. It is apparent that not only this, he had also observed the fact that the petitioner was not residing within the jurisdiction of Court under his control and as such procedure provided under Section 202 of Cr.P.C. was required to be followed. It was, however, observed by him that since the complaint was totally based upon documentary evidence, therefore, no benefit would be achieved by sending the matter to the police for investigation particularly when he could inquire the same. Learned Magistrate had relied upon the observations made by Hon'ble Supreme Court in '*Sunil Todi and others vs. State of Gujarat and others, 2022(1) RCR (Criminal) 395*' wherein while dealing with a similar matter where prayer had been made for quashing of criminal complaint filed under Section 138 of NI Act and the summoning order, it was observed that the petition filed by the petitioner was not maintainable. The Hon'ble Supreme Court had also relied upon its constitution Bench decision in re: Expeditious Trial of Cases under Section 138 of NI Act, 1881 (supra), wherein it was held that Section 202(2) is inapplicable to complaint under Section 138 of NI Act in examination of witnesses on oath.

13. In view of the discussion as made above, it is held that the learned Magistrate had applied his mind as to the question of applicability of Section 202 of the Code to the complaint as filed by the respondent while



passing the impugned order and also committed no error in issuing process as against the petitioner as there was sufficient material available before him to do the same. As such, no ground has been made out to quash the complaint as well as the impugned order passed there. Accordingly, finding no merit, the petition is dismissed.

[MANISHA BATRA]
JUDGE

27th September, 2024
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |