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

203. **CRM-M-41774-2022(O&M)**
Reserved on: 29.01.2024
Pronounced on:31.01.2024

Nanak Chand Tayal and another ...Petitioners

Versus

Manoj Singla ....Respondent

2. **CRM-M-41873-2022(O&M)**

Nanak Chand Tayal and another ...Petitioners

Versus

Renu Goyal ...Respondent

3. **CRM-M-41874-2022(O&M)**

Nanak Chand Tayal ...Petitioner

Versus

Rajinder Kumar Aggarwal ...Respondent

4. **CRM-M-41897-2022(O&M)**

Nanak Chand Tayal and another ...Petitioners

Versus

Munesh Sharma ...Respondent

5. **CRM-M-41919-2022(O&M)**

Nanak Chand Tayal ...Petitioner

Versus

Dheeraj Kumar Aggarwal ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Reshabh Bajaj, Advocate
for the respondent in CRM-M- 41774-2022,
CRM-M-41874-2022, CRM-M-41873-2022
and CRM-M-41919-2022.

None for the respondent in CRM-M No.41897 of 2022.

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<u>Harpreet Singh Brar, J.</u>

1. This common order shall dispose of all five of the above-mentioned cases as they arise from the similar factual matrix. However, for the sake of brevity, facts are culled out from CRM-M-41774-2022.

2. The present petition is preferred under Section 482 of the Cr.P.C. seeking quashing of complaint no. NACT-3598 of 2020 dated 21.08.2020 titled ***'Manoj Singla v. SRS Buildmart Pvt. Ltd and ors'*** under Sections 138, 141(1) and 141(2) of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act') and all subsequent proceedings arising therefrom including summoning order dated 25.04.2022 passed by learned Judicial Magistrate Ist Class, Faridabad (Annexure P-3) under Section 138 of the NI Act.

3. Briefly, the facts are that petitioner No.1 is the Director of a company named SRS Buildmart Private Limited while petitioner No.2 is the Promoter, Organiser and Officer-in-Charge for the said company. On 04.07.2017, petitioners No.1 and 2 asked the respondent to invest in their company and borrowed a sum of Rs.7,00,000/- from him, assuring him that it would be returned with interest at the rate of 1% per month. The petitioners-accused paid the interest in cash up to 05.10.2017. In the month of March, 2018, on the request of the respondent, the accounts were settled for an amount of Rs.9,17,000/- i.e. the total amount including interest upto 06.05.2020. Out of this amount of Rs.9,17,000/-, the petitioners-accused paid Rs.5000 in cash and to discharge the remaining liability, issued cheque bearing No.420231 dated 06.05.2020 for Rs.9,12,000/- in favour of the respondent. On presentation, the cheque was dishonoured vide memo dated 29.06.2020 with remarks 'account blocked.' Thereafter, a legal notice dated 13.07.2002 was sent to the

petitioners-accused. Since, the petitioners failed to make the requisite payment, the present complaint was filed.

4. On finding a prima facie case against petitioners, learned JMIC, Faridabad summoned them to face trial for commission of offence under Section 138 of the NI Act, vide order dated 25.04.2022.

5. For the sake of clarity, it is apt to give certain details with respect to cheques, which were dishonoured and the summoning orders against which present petitions are filed, which are tabulated as under:-

Case No.	Complainant	Cheque No. & date	Amount of cheque (Rs).	Date of dishonour	Remarks	Date of Summoning order
CRM-M-41774 of 2022	Manoj Singla	420231 dated 06.05.2020	9,12,000/-	29.06.2020	Account blocked	25.04.2022
CRM-M-41873 of 2022	Renu Goyal	234250 dated 15.05.2021	10,66,000/-	21.07.2021	Kindly contact drawer	05.05.2022
CRM-M-41874 of 2022	Rajinder Kumar Aggarwal	094332 dated 21.11.2019	4,38,000/-	18.01.2020	Account blocked	28.03.2022
CRM-M No.41897 of 2022	Munesh Sharma	420722 dated 21.11.2019	12,41,000/-	25.11.2019	Account blocked	06.06.2022
CRM-M-41919 of 2022	Dheeraj Kumar Aggarwal	09433 dated 11.12.2019	5,88,000/-	18.01.2020	Account blocked	08.03.2022

6. Learned counsel for the petitioners *inter alia* contended that admittedly the cheques in question in all the cases have been issued after a lapse of more than three years from their resignation on 01.06.2017. The resignation of petitioners is clearly discernible from Form DIR-12, which was uploaded on the official website of the Registrar of Companies on 24.06.2017. The cheque in question was dishonoured on 29.06.2020 i.e. after petitioners had resigned as Director of the company. As such, petitioners cannot be held liable in any manner in respect of dishonour of cheques in question. Reliance in this regard is placed upon the judgments rendered by the Hon'ble Supreme Court as well as by this Court in ***Ajay Aggarwal Vs. M/s Integrated Finance***

Company Limited, Criminal Appeal Nos.586-594 of 2018 decided on 28.04.2018; ***Ashoke Mal Bafna Vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd. 2017 AIR (SC) 2854; Harshendra Kumar D. Vs. Rebatilata Koley etc. (2011) 3 SCC 351; Pooja Ravinder Devidasani Vs. State of Maharashtra and another 2015 (1) RCR (Civil) 297; Mrs. Anita Malhotra Vs. Apparel Export Promotion Council and another 2011 (4) RCR (Civil) 930*** and ***Megha Goyal and another Vs. Raj Kumar Tayal, CRM-M No.24742 of 2017; 2024:PHHC:007865.***

7. Per contra, learned counsel appearing for the respondent *inter alia* contended that petitioners deliberately and with ulterior motive resigned from the company only to avoid their prosecution and also to escape from their liability. He further contended that it has been specifically pleaded in paras 9 to 12 of the complaint that petitioners have played an active role in the management and control of the company as they were holding 70% of the shares i.e. the majority of shares of the accused-company and petitioners are the one, who actually controlled reins of the company having complete power over the day to day affairs and business of the same, therefore, it is a fit case to lift the corporate veil. He further relies upon the judgment of a two Judge Bench of the Hon'ble Supreme Court in ***S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan (2023) 10 SCC 685*** to contend that the Hon'ble Supreme Court has categorically held that the Court should not interfere at the instance of the accused in a complaint under Section 138 of the NI Act unless it comes across some unimpeachable and incontrovertible evidence. While setting aside the order passed by the Madras High Court whereby the High Court had quashed the criminal proceedings initiated under Section 138 of the

NI Act, the Hon'ble Supreme Court speaking through Justice J.B. Pardiwala has observed following:-

> ***"****40. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya supra are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.*
>
> *46**.** When in view of the basic averment process is issued the complaint must proceed against the Directors or partners as the case may be. But, if any Director or Partner wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of Court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint, it must be shown that no offence is made out at all against the Director or partner."* *(emphasis supplied)*

8. Having heard learned counsel for the parties and after perusing the record, this Court finds no force in the arguments raised by the learned counsel for the petitioners as the disputed facts, cannot be determined by this Court on the basis of the probable defence taken by the petitioners in the present petition. 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 obligated 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.

9. 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, the following was observed:-

> *"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."*

10. A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Ltd v. M.A. Abida (2015) 11 SCC 776***, speaking through Justice Dipak Misra, 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 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."*

11. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, speaking through Justice Adarsh Kumar Goel, made the following observations:-

> "*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."*

12. In view of the aforesaid facts and circumstances, this Court finds no merit in the arguments raised by the counsel appearing for the petitioners. Consequently, all petitions are dismissed being devoid of merit.

(HARPREET SINGH BRAR)
JUDGE

January 31, 2024
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No