

M/S ALFARA A INFRA PROJECTS PRIVATE LIMITED AND ORS

V/S

M/S RMC READY MIX (INDIA)

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Bhupinder Ghai, Advocate
for the petitioners.

Mr. Brajesh Kumar Kaundal, Advocate for
Mr. Atul Goyal, Advocate for respondent.

HARPREET SINGH BRAR J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. for quashing of complaint i.e. NACT No.22122/2018 dated 08.06.2018 filed by respondent under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') pending in the Court of Judicial Magistrate Ist Class, Gurgaon, along with its summoning order dated 16.12.2019 (Annexure P-2) and all the subsequent proceedings arising therefrom.

2. Briefly, the facts are that petitioner Nos.2 and 3 are directors as well as authorized signatories of petitioner No.1. The petitioners issued two cheques i.e. bearing Nos.374788 dated 05.01.2018 and 374787 dated 18.01.2018 for an amount of Rs.19,01,499/- each against invoices and bills, for goods purchased on credit from the respondent. On presentation for encashment, the above-mentioned cheques were dishonoured vide memo dated 04.04.2018. Thereafter, a legal notice dated 04.05.2018, was issued to petitioners. However, the petitioners failed to make the requisite payment and

the instant complaint under Section 138 of the Act was filed.

3. Learned counsel for the petitioners *inter alia* contends that a perusal of the complaint (supra) would indicate that the pleadings in para No.3 are incorrect to the extent that petitioner No.3 is not the signatory of the cheques. Moreover, the cheques in question were issued against a purchase order and only for the sole purpose of safe dealing. He further relies upon Annexures P-6 to P-9, to set up a defence that the liability has been disputed by the petitioner, which is clearly discernible from the e-mail dated 18.11.2017 (Annexure P-8). A perusal of Annexure P-9 would clearly indicate that these are post-dated cheques and in the entire complaint, there is no whisper with regard to the existence of a legally enforceable debt, to make the petitioner liable for an offence under Section 138 of the Act. Furthermore, after filing of the present complaint, insolvency proceedings were initiated and a moratorium has been imposed on 19.04.2019 (Annexure P-5), which further proves non-existence of any liability on the part of the petitioners. Reliance in this regard is placed upon *A.C. Narayanan v. State of Maharashtra 2013(4) RCR (Criminal) 306* and *Ajay Gupta v. ICICI Bank Ltd 2021(1) RCR (Criminal) 483*.

4. On the other hand, learned counsel for respondent submits that the petitioner has raised disputed question of facts, which can only be decided on the basis of evidence adduced by the parties and that the prosecution cannot be scuttled at the threshold by invoking the power under Section 482 Cr.P.C by not giving an opportunity to the respondent to prove its case.

5. Having heard learned counsel for the parties and after perusing the record, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The insolvency proceedings were initiated on 19.04.2019, whereas, the cheques in question were issued on 05.01.2018 and 18.01.2018,

respectively regarding which the complaint (supra) was filed on 08.06.2018, which is much prior to the initiation of insolvency proceedings. In view of the ratio of law as laid down in ***P. Mohanraj and others Vs. Shah Brothers Ispat Private Limited (2021) 6 SCC 258*** and ***Narinder Garg v. Kotak Mahindra Bank 2022(2) R.C.R. (Civil) 934***, the arguments raised by learned counsel for the petitioners are required to be rejected as the erstwhile directors are liable to be prosecuted under Section 138 of the Act since the insolvency proceedings only protects the corporate debtor.

6. 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 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.”

7. 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 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.”

8. Further, the inherent powers under Section 482 Cr.P.C. cannot be exercised for determining question of facts. It is only for the trial Court to determine the disputed questions of fact, after examining the evidence on record and interference by this Court, with regard to factual questions is impermissible in law. Therefore, this Court cannot appreciate the defence set up by the petitioners, in the present case.

9. In view of the above discussion, the instant petition stands dismissed.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

February 15, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No