2024:PHHC:172649

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121 **CRM-M-58375-2024 (O&M)**
DATE OF DECISION: 22.11.2024

SANJAY BHATI **...PETITIONER**

Versus

RAJINDER KUMAR **... RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lakshay Bector, Advocate
for the petitioner (through Hybrid Mode).

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SANDEEP MOUDGIL, J (ORAL)

1. The complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'Act of 1881' in short) (Annexure P-1) has been sought to be quashed along with the summoning order passed subsequently on 18.01.2021 (Annexure P-5) by the Sub Divisional Judicial Magistrate, Garhshankar, District Hoshiarpur while asking this Court to exercise inherent jurisdiction vested to it under Section 482 of the Code of Criminal Procedure, 1973. It has been further prayed that proceedings in the complaint be stayed and no coercive action be taken against the petitioner during the pendency of the instant petition.

2. The question raised before this Court to adjudicate is that once the petitioner was not a Director on 15.11.2019 i.e. the date of cheque, he cannot be made liable to face prosecution under Section 138 of the Act of 1881.

3. Before I proceed to examine the aforesaid question it would be appetite to have a glance on the factual matrix as can be culled out from the complaint itself i.e. 10.09.2024 (Annexure P-1). The complainant-respondent namely Rajinder Kumar has averred that accused No.3 is a registered Limited Company wherein accused No.2-Sanjay Bhati-petitioner is a Director of the Company and one Karan Pal Singh-accused No.1 is the authorized signatory of Garvit Innovative Promoters Limited. The allegation is that the complainant-respondent invested money with the Garvit Innovative Promoters Limited-accused No.3 with whom an agreement was executed through its Director-present petitioner on 28.11.2018 which has been duly signed by the petitioner admitting the contents recorded therein.

In furtherance of execution of that agreement, an amount of Rs.5,47,690/- became due against the accused persons including the present petitioner who in order to discharge their liability issued a cheque No.605768 dated 15.11.2019 for the equal amount drawn at Noble Cooperative Bank Limited, Noida in favour of the complainant-respondent-Rajinder Kumar. There was an implied assurance that on presentation of the cheque, it will be duly honoured by the Bank, however, when the complainant-respondent presented the cheque it was returned as dishonoured with the remarks “account blocked” on 16.01.2020. It is also the assertion of the complainant that sufficient amount was not available in the bank account of accused persons who went ahead to issue the cheque in question with the assurance of its honour. Thereafter a statutory notice was also issued upon the accused on 06.02.2020 but the accused persons including the present petitioner-

Sanjay Bhati failed to pay the amount of cheque who even did not bother to gave a reply to the said notice within the stipulated period of 30 days.

4. It is in this background being aggrieved the complainant-Rajinder Kumar preferred the instant complaint and the Sub Divisional Judicial Magistrate, Garhshankar after recording preliminary evidence consisting of statement by CW-1-complainant, the original cheque (Ex. C-1), Bank memo (Ex. C-2), Legal notice dated 06.02.2020 (Ex. C-3) along with original postal receipts (Ex. C-4 to C-6) vide its order dated 18.01.2021 (Annexure P-5) issued summoning of the accused persons including the present petitioner-Sanjay Bhati.

5. The present petitioner-accused No.2 Sanjay Bhati has assailed the summoning order dated 18.01.2021 (Annexure P-5) along with complaint dated 10.09.2024 (Annexure P-1) by instant petition submitting that no details of any purported investment made by respondent on the basis of alleged assurance by the petitioner, have been provided in the complaint or at the time of preliminary evidence. It is also submitted on behalf of the petitioner that the alleged agreement lacks essential details of any transactions which does not bear the signatures of complainant-respondent which has also not been produced in preliminary evidence by him and, therefore, the order dated 18.01.2021 (Annexure P-5) suffers from material illegality.

It is also argued that the petitioner-accused No.2 cannot be held liable with the accusation made in the complaint inasmuch as the respondent-complainant ought to have verified form No.DIR-12 which would clearly establish that the petitioner has already resigned from the

Directorship of Company-accused No.3 on 18.11.2018. In support thereof, he has relied upon a judgment in ***Sudeep Jain versus ECE Industries Limited, 201(2013) DLT-461*** referring to the observation that Magistrate must seek a copy of Form 32 from the complainant to *prima facie* satisfy as to who were the Directors of the accused Company at the time of commission of the alleged offence and on the date of the filing of the complaint case.

6. Mr. Lakshay Bector, learned counsel appearing for the petitioner also disputed the summoning order and the complaint against the petitioner asserting that essential ingredients of Section 141 of the Act of 1881 have not been fulfilled as he was neither in charge nor responsible for the affairs of the Company at the time of issuance of the said cheque in question having resigned as such w.e.f. 18.11.2018 whereas the cheque was issued on 15.11.2019. He has also drew attention of this Court to Form No.DIR-12 at Annexure P-6 to the present petition. It is also vehemently argued that the complaint lacks specific averment qua the role of the petitioner in day to day conduct and business of accused No.3-Company of which he was a Director prior to 18.11.2018 and lastly showed ignorance about the legal notice, having not received the same and pendency of the complaint in question, being in custody in some other criminal case since 07.06.2019 after having surrendered before the Court of Sub Divisional Judicial Magistrate, Surajpur, U.P.

7. Heard learned counsel for the petitioner and having perused the relevant record placed before this Court by the petitioner.

8. 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."*

9. 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."*

10. From the submissions as recorded hereinabove and the pleadings arising out in the present petition itself, the accused No.2-petitioner has disputed the execution of agreement dated 28.11.2018 itself stating that the complainant-respondent-Rajinder Kumar has not

signed the said agreement. He has further countered the impugned complaint and summoning order stating that same has not been produced in preliminary evidence before the Sub Divisional Judicial Magistrate.

11. The perusal of complaint though would make it ample clear vide para 3 that a specific pleading has been made qua the execution of agreement and in pursuance to which the complainant has invested money with categoric allegation against the present petitioner having signed the said agreement on 28.11.2018. Though it is evident from the summoning order dated 18.01.2021 (Annexure P-5) that the agreement was not among the exhibited documents at that stage but at the same time the present petitioner has also not produced the said agreement dated 28.11.2018 to substantiate his argument before this Court. It was otherwise also incumbent upon the petitioner to place on record the said agreement in support of his own argument to demonstrate that complainant-respondent has not signed the said agreement but he has failed to do so. He also could not make any plausible explanation before this Court as to what stopped him from showing that agreement to sell the light of the day. Hence in these circumstances such argument of the petitioner would not hold good and an adverse inference will be drawn atleast at this stage to make out *prima facie* opinion.

12. The next argument qua the resignation of his from Directorship of accused No.3-Company w.e.f. 18.11.2018 is concerned, I have minutely examined the said Form at Annexure P-6 to the instant petition which has been shown to be attested by the notary public on

19.09.2023 but said form do not indicate the date of its presentation, if any to the Office of Registrar of Companies and, therefore, it cannot be finally and conclusively held that the petitioner has resigned w.e.f. 18.11.2018 from the Company as Director. Moreover, assuming that if he has actually resigned, still it is to be seen as to whether he was a signatory to the said agreement as a Director of the Company-accused No.3 and from which date he actually stopped working as Director.

13. These very aspects are disputed in nature which can be testified only after the evidence is led by the parties before the trial Court below. 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."*

14. The plea raised before this Court to the effect that petitioner is not a signatory to the cheque in question, is also not impressive since the same has been signed by authorized signatory-accused No.1 but he has signed on behalf of the Company alone of which the petitioner was a Director admittedly at the time when the agreement dated 21.11.2018 was executed and in pursuance thereof, the cheque in question has been issued under the signatures of authorized signatory which would not absolve the petitioner from liability of the dues on behalf of the Company, if any can be established by the complainant-respondent.

15. Coming to the last issue raised to the effect that the complainant has failed to prove or disclose any clear and specific role of the petitioner in the day to day conduct and business of the Company.

16. This Court having perused the complaint and paras 2, 3 and 4 in particular which have assigned the role to the petitioner as that of the Director having entered into the agreement on behalf of the Company with the complainant-respondent. As such, this point is also held against the petitioner.

17. In addition to the above, the defence qua having no knowledge about the legal notice and pendency of the instant complaint would also fail as even after having known about the pendency of the present complaint atleast latest by 09.09.2023 i.e. the date of attestation of Form No.DIR-12 placed on record by the

petitioner alone, no effort whatsoever have been made to join the proceedings before the trial Court till date.

18. Further dependence can be placed upon judgment titled as ***Rathish Babu Unnikrishnan vs The State (Govt. of NCT of Delhi) & Anr., 2022 (2) RCR (Criminal) 871***, wherein 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."*
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> *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.*
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> *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."

19. From the above judgements and discussion made, 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 under Section 139 of the Act, such complaints cannot be quashed on the basis of the averments made by the accused with regard to his defences.

20. In the light of above discussion and based on the unfolded facts and circumstances before this Court, I am of the considered view that the present petition sans merit and therefore, is ordered to be dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

22.11.2024
Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*