



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54593-2024
DECIDED ON: 05.11.2024

ANKUR KAPLESH
.....PETITIONER

VERSUS

NEETU RANI
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kanwar Abhay Singh, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 for quashing of complaint bearing No.COMA/5111 dated 24.03.2023 under Section 138 of Negotiable Instruments Act, 1881 read with Section 420 of IPC, 1860 (Annexure P-1) as well as the summoning order dated 17.07.2023 (Annexure P-2) passed by learned Judicial Magistrate First Class, Ludhiana.
2. Learned counsel for the petitioner contends that the respondent was employee of the petitioner's company i.e, Secured Engineers Pvt. Ltd., since 2013 and was assigned the job of Admin Executive vide appointment letter dated 01.06.2015, wherein she looked after various responsibilities including dealing with the clients, handling finances and issuing invoices of the company.
3. He argues that respondent received various payment from the petitioner's company and was deeply engaged in the management of the

company. Specifically on 14.05.2019, the respondent received Rs.5,00,000/- from M/s Moon Light Steel Pro for material supplied by the petitioner's company and this amount was subsequently transferred to the petitioner's account on 16.10.2019. Simultaneously in March 2020, Nationwide Lockdown was implemented due to COVID-19 outbreak forcing the petitioner's company to suspend its work. Upon resuming work, the company found that its two cheque books bearing No.050701 to 050725 and 058700 to 058735 issued by Oriental Bank of Commerce against petitioner's account number 513621191029098 were missing and subsequently lodged a Lost Information Report dated 14.05.2020 (Annexure P-6).

4. It is further asserted on behalf of the petitioner that the respondent attempted to encash a cheque bearing No.050723 from Oriental Bank of Commerce which already stood merged with the Punjab National Bank, therefore, the respondent could not have legally encashed the cheque.

5. Heard.

6. The fact that needs to be considered before taking into consideration the quashing of the instant petition is that the petitioner is also disputing his signatures on the alleged cheque which is evident from his pleadings mentioned in para No.17 of the petition and in this regard, he submits that his signatures have been forged by the respondents to make him liable under Section 138 of the Act. Since both the facts are disputed, therefore, this Court at this stage without weighing the evidence of either of the parties which is to be led before the trial Court to prove their stance cannot quash the complaint. Relevant para No.17 of the present petition reads as under:-

“That upon connecting the chain of events, the only conclusion that can be drawn is that Respondent took the cheque in dispute from the possession of Petitioner in 2020 and has misused it in the year 2022. Moreover, in order to misuse, the cheque, the Respondent must have forged the signatures of Petitioner, whereto the Respondent is well familiar on account of her long drawn employment with Petitioner's company. Furthermore, it is hereby submitted that the fact that Petitioner's signature has been forged on the cheque in dispute by Respondent, is further substantiated from the point that forged signatures on the cheque are different from the actual signatures of the Petitioner, and the same is much apparent from a bare perusal of the cheque in dispute against the actual signatures of the Petitioner.”

7. A perusal of the aforesaid paragraph would clearly depict that it is a case where facts are being disputed on merit but no legal question has been raised in the instant petition.

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. Medchl Chemicals 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. 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."

11. So far as quashing of the criminal proceedings in exercise of powers u/s 528 of the BNSS, 2023 is concerned, the judgements of the Apex Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], *Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haque* : (2005) 1 SCC 122 and *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others* : 2021 SCC OnLine SC 315, are the guiding factors and limbs of such powers, were the prima facie on the facts and materials available before the Court, it is found that no case as alleged is made out then such proceedings can be quashed in exercise of the powers.

12. In the case of *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330, the Apex Court has held as under:

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."

13. 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."

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.

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."

14. From the above judgements, 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.

15. In light of the aforementioned judgments of the Apex Court and the petitioner’s admission that the case involves disputed questions of fact, without raising any legal issues, this Court finds it appropriate not to exercise its inherent powers under Section 528 of BNSS, 2023. The matter can only be properly adjudicated based on evidence, which can be presented before the trial court. Therefore, the present petition, lacking merit, is dismissed.

(SANDEEP MOUDGIL)
JUDGE

05.11.2024

Poonam Negi
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No