

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

117.

CRM-M No.62719 of 2023 (O&M)
Date of Decision:29.01.2024

Baba Shiva Nand Das alias Shiva Nand Dass Ji

... Petitioner

Versus

Piara Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anil Kumar Saini, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of the summoning order dated 17.09.2019 (Annexure P-2) and notice of acquisition dated 08.12.2022 (Annexure P-3) passed by the learned Judicial Magistrate 1st Class, Gurdaspur and all other subsequent proceedings arising therefrom.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner is a victim of malicious prosecution at the hands of the respondent-complainant. He is 94 years of age and is a hermit, as he has no permanent place of abode. The allegations contained in the complaint clearly indicates that the basic ingredients of Section 138 of the Negotiable Instruments Act, 1881 are conspicuously missing, as no legally enforceable debt qua the cheque in question against the petitioner is made out. Further, the allegations contained in the complaint supra that Rs.6 lakhs was given to the petitioner by the respondent-complainant for facilitating employment in the Chandigarh Police to his son

would breach the threshold of illustration (f) of Section 23 of the Indian Contract Act, 1872. In support of his contentions, reliance is placed on the judgment rendered by this Court in ***Deepak Sharma Vs. Satender Singh Rawat 2022 (4) Law Herald 3243 (P&H)*** and judgments of other High Courts in ***B. Babu Rao Vs. Kishore Naidu Durga Manik 2022 (4) CCC 791 (Telangana High Court); Virender Singh Vs. Laxmi Narain and another 2007 (3) RCR (Criminal) 157 (Delhi High Court); R. Parimala Bai w/o B.S. Krishnan Vs. Bhaskar Narasimhaiah 2018 (4) RCR (Criminal) 26 (Karnataka High Court)***. Reliance is also placed on the judgments rendered by the Hon'ble Supreme Court in ***K. Subramani Vs. K. Damodara Naidu 2014 (4) RCR (Criminal) 985; Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel 2023 (1) RCR (Criminal) 408***.

3. Having heard learned counsel for the petitioner and after perusing the record of the case, this Court finds no merit in the present petition as disputed questions of fact, cannot be appreciated by this Court. Moreover, the defence set up by the petitioner in the present petition can only be looked into by the learned trial Court on the basis of evidence adduced by the parties. A two Judge Bench of the Hon'ble Supreme Court in ***HMT Watches Ltd. Vs. M.A. Abida (2015) 1 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.”

4. Keeping in view of the aforesaid facts and circumstances, this Court finds no merit in the present petition. Consequently, the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

January 29, 2024
Pankaj*

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