IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

203 **CRM-M No.63462 of 2023 (O&M)**
Reserved on:09.02.2024
Pronounced on:20.02.2024

Babalgeet Singh ...Petitioner

versus

HDFC Bank Ltd. ...Respondent

2. CRM-M No.63352 of 2023

Balwinder Singh ...Petitioner

versus

HDFC Bank Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Manit Malhotra, Advocate
for the petitioner in both petitions.

Mr. Saurabh Bhardwaj, Advocate
for the respondent.

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HARPREET SINGH BRAR, J.

1. This order of mine shall dispose of both the petitions as detailed above, as they arise from similar facts and circumstances. However, for the sake of brevity, facts are taken from CRM-M No.63462 of 2023.

2. The petitioner has approached this Court by the filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'NI Act'), bearing No.NACT/455/2019 dated 26.07.2019, and all subsequent proceedings arising therefrom (Annexures P-1 and P-3 in the Court of

learned Judicial Magistrate 1st Class, Kapurthala, titled as *'HDFC Bank v. Babalgeet Singh'* under Section 138 of the NI Act).

FACTUAL MATRIX

3. The brief facts of the present case are that the respondent-complainant is a bank with its registered office at HDFC House, Senapati Bapat Marg, Lower Parel, West Mumbai – 400013, and one of its branches at Kapurthala. The petitioner was granted C.C. Agriculture Limit of Rs.95,00,000/- under Loan Account No. 50200023232498 by the respondent bank. In consideration of sanctioning of aforesaid loan/limit, the petitioner executed various deeds and documents, as required for obtaining the loan, in favour of the respondent bank.

4. Since the petitioner failed to repay the abovementioned loan amount, the respondent bank filed a case bearing No.OA/3252/2019, titled *'HDFC Bank v. Babalgeet Singh'* before the Debts Recovery Tribunal – 3, Chandigarh on 20.12.2019, in which summons were issued to the petitioner vide order dated 07.10.2021.

5. The respondent bank also instituted a complaint under Section 138 of the NI Act alleging that the petitioner had issued a cheque bearing No.000006 dated 12.06.2019 for Rs.82,00,000/-in favour of the respondent bank, in order to discharge his legally enforceable liability. On presentation for encashment, the said cheque was dishonoured vide memo dated 13.06.2019 with remarks "Insufficient Funds". Thereafter, a legal notice dated 05.07.2019 was served upon the petitioner. However, since the petitioner failed to make the requisite payment in the stipulated time period, the instant complaint was filed before the learned Chief Judicial Magistrate, Kapurthala on 26.07.2019. Hence, the present petition has been filed seeking quashing of the criminal complaint on the ground that proceedings for recovery of the disputed amount are already pending before the Debts Recovery

Tribunal – 3, Chandigarh.

<u>CONTENTIONS</u>

6. Learned counsel for the petitioner *inter alia* contended *that* the respondent/complainant-Bank has already filed an application for recovery of alleged debt before the Debts Recovery Tribunal, Chandigarh (DRT3) in which summons have already been issued to the petitioner and therefore, the complaint filed under Section 138 of the NI Act is not maintainable. In support of this contentions, he relied upon the judgments rendered by the Hon'ble Supreme Court in ***M/s Gimpex Private Limited Vs. Manoj Goel (2022) 11 SCC 705; P. Mohanraj and others Vs. M/s Shah Brother Ispat Pvt. Ltd.*** Civil Appeal No.10355 decided on 01.03.2021 and ***Nahar Industrial Enterprises Ltd. Vs. Hong Kong & Shanghai Banking Corporation 2011 (7) RCR (Civil) 95***. It was further contended that the alleged cheque was given by the petitioner at the time of availing the CC Agricultural Limit as security and therefore, at the time of issuance of cheque, there was no legal liability against the petitioner. In this regard, reliance was placed upon the judgment rendered by the High Court of Madras in ***A.R. Chellappan Vs. A.R.E. Thirugnanam Law Finder Id:900481*** and the Delhi High Court in ***IKF Technologies and others Vs. Sasi Bhushan Raju Law Finder Id:450963.***

7. Per contra, learned counsel appearing for the respondent contended that there is no embargo in initiating simultaneous proceedings for recovery of debt under the Securitization and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act) and fastening criminal liability of the defaulter for not discharging the legally enforceable debt under Section 138 of the NI Act. In support of his contention, he relied upon the judgments passed by the Hon'ble Supreme Court in ***Gurcharan***

Singh and another Vs. M/s Allied Motors Ltd. and another Crl. Appeal No.1523 of 2004 decided on 17.12.2004 and ***Guru Granth Saheb Sthan Meerghat Vanaras Vs. Ved Prakash and others*** Civil Appeal No.4166 of 2013 decided on 01.05.2013 to contend that criminal proceedings under Section 138 of the NI Act and the civil suit/arbitration proceedings over the same cause can run simultaneously and there is no requirement that proceedings either civil or criminal must be stayed. Further reliance also placed upon the judgment passed by the Bombay High Court in ***Mr. Mahesh Pralhad Salunke Vs. Bharati Sahakari Bank Ltd.*** Criminal Writ Petition Nos.2131, 2450 of 2019 decided on 16.08.2019 wherein prayer of the petitioner for quashing of proceedings initiated under Section 138 of the NI Act on the ground of pendency of simultaneous proceedings under the SARFAESI Act was rejected.

OBSERVATION AND ANALYSIS

8. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance as well as the case laws cited, it transpires that there is no merit in the arguments raised by the counsel for the petitioner.

9. Loan granted by the financial institutions does not become the property of the person taking the loan but it is given in a fiduciary capacity out of the public money generated at the expense of tax payers. In order to facilitate the swift and efficient recovery of bad loans by the banks and financial institutions, the SARFAESI Act was enacted in the year 2002. On the other hand, the Negotiable Instruments Act, 1881 is a codified law relating to promissory notes, bills of exchange and cheques and ascribes criminal liability for dishonour of a cheque. The legislature enacted both the laws with different objects and reasons. Both laws are excluded from the trappings of Code of Civil Procedure and Code of Criminal Procedure and are governed by the concept of summary trial based on the principle

of natural justice. The proceedings under Section 138 of the NI Act are quasi-criminal in nature and therefore, there is no embargo in initiating proceedings under the SARFAESI Act and Section 138 of the NI Act simultaneously. The judgment relied upon by the counsel for the petitioner in the case of ***M/s Gimpex Private Ltd. (supra)*** was a case where in a complaint filed under Section 138 of the NI Act for dishonour of cheque, a settlement agreement was entered into by parties, however, the cheque issued in pursuance of the settlement agreement was also dishonoured. It was in this backdrop, the Hon'ble Supreme Court held that once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed. It was further observed that pursuing both the complaints would lead to contradictory results, increase the burden on the criminal justice system and discourage settlement matters. Therefore, the ratio decidendi culled out in the aforesaid judgment is not applicable to the facts and circumstances of the present case.

10. Further, reliance placed upon the judgment in ***P. Mohanraj's case*** (supra) does not come to the rescue of the petitioner, as the same is distinguishable from the facts of the present case. In the said case, the question for consideration before the Hon'ble Supreme Court was whether the institution or continuation of a proceeding under Section 138/141 of the NI Act can be covered by the moratorium provision namely Section 14 of the Insolvency and Bankruptcy Code (in short IBC), 2016 and the Hon'ble Supreme Court answered that proceedings under Section 138/141 of the NI Act against a corporate debtor is covered by Section 14 (1) (a) of the IBC. However, the counsel for the petitioner has failed to bring to the notice of this Court any provision of SARFAESI Act which debars initiation of proceedings under Section 138 of the NI Act. Moreover, the moratorium under

Section 14 of the IBC applies only to the Corporate Debtor and in the present case, neither the proceedings are initiated under the IBC nor the debtor is a Corporate Debtor.

11. Another argument raised by the counsel for the petitioner that the cheque was given as security at the time of availing loan facility and not as a legal liability is a disputed question of fact, which is a matter of trial and cannot be determined by this Court under Section 482 Cr.P.C. 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."*

12. On the other hand, this Court finds merit in the argument raised by the counsel for the respondent that there is no embargo in initiating civil and criminal proceedings for the same cause of action. A two Judge Bench of the Hon'ble Supreme Court in ***Dr. Purshotama Reddy and another Vs. K. Sateesh (2008) 8 SCC 505*** speaking through Justice S.B. Sinha has held as under:-

> *"9. A suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint*

petition under terms of Section 138 of the Act would also be maintainable.

xxxx xxxx xxxxx

14. Evidently, a duty has been cast upon the civil courts to take into account the sum paid or recovered as compensation in terms of Section 357 of the Code. It is futile to urge that on the date on which the civil court passed the decree the appellants were not convicted. As noticed hereinbefore, the appeal is a continuation of the suit and in that view of the matter as the appellants had in total deposited a sum of Rs 4,00,000 i.e. Rs 2,10,000 in the criminal proceeding and Rs 1,90,000 in the civil proceedings, out of which a sum of Rs 3,09,000 has been withdrawn by the respondent, the High Court was obligated to take the same into consideration. In other words, having regard to the provisions of sub-section (5) of Section 357 of the Code, a duty was cast upon the High Court to take into account the fact that a sum of Rs 2,00,000 had already been paid by the appellants to the respondent. Concededly, both the proceedings were maintainable. Law recognises the same. Parliament must have the situation of this nature in mind while enacting clause (b) of sub-section (1) of Section 357 of the Code and sub-section (5) thereof.

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19. We, therefore, are of the opinion that the impugned judgment should be modified and is directed to be modified accordingly. The matter is remitted to the learned trial Judge. The learned trial Judge is directed to take into consideration the amount of compensation deposited by the appellants in the criminal case and for the said

> *purpose, the learned trial Judge should draw up a fresh decree while correcting the decree in terms of the order of this Court. The learned trial Judge shall, while preparing a fresh decree, take into consideration the various dates on which the diverse amounts had been deposited by the appellants and calculate the interest payable thereupon."*

CONCLUSION:

13. In view of the above, this Court does not find any merit in both the petitions and they are dismissed accordingly.

(HARPREET SINGH BRAR)
JUDGE

February 20, 2024
Pankaj*

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