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**128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**CRM-M-60782-2024
Decided on : 04.12.2024

Balvir Singh

..... Petitioner

Versus

Harbhajan Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAULPresent : Mr. Gaurav Kalsi, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

1. This is the petition filed by the petitioner under Section 528 of BNSS seeking quashing of complaint No.COMA/46143/2023 dated 01.06.2023 and summoning orders dated 19.08.2023 under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') passed by learned JMIC, Ludhiana along with all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner has contended that the summoning order dated 19.08.2023 (Annexure P-2) passed by the trial Court is erroneous and has been passed in complete disregard of statutory provisions. While referring to the complaint annexed as Annexure P-1, learned counsel has submitted that, as per the allegations, the petitioner entered into an agreement to sell a property



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to the respondent for a total consideration of Rs.2 lakhs. It is claimed that the petitioner had already paid Rs.1 lakh in cash to the respondent at the time of the agreement, whereupon possession of the property was handed over of the petitioner.

3. It has been further submitted that subsequently, petitioner issued a cheque bearing No.004829 dated 19.04.2023 for the remaining Rs.1 lakh, which was allegedly dishonoured upon presentation. Learned counsel has contended that the petitioner has been falsely implicated in the present case as there is no evidence to substantiate the claim that the petitioner owes any outstanding amount to the respondent-complainant. As per the learned counsel, the cheque in question was issued merely as a security instrument and the remaining Rs.1 lakh was paid in cash on 20.01.2022. Learned counsel for the petitioner has further alleged that despite repeated requests by the petitioner, the respondent failed to return the cheque and instead falsely claimed that it was misplaced.

4. It has been further submitted that the respondent presented the cheque after an unexplained delay of 2 years, without the consent of the petitioner, in a deliberate attempt to establish a false claim. Learned counsel has argued that it is improbable that the respondent, having already received the full payment and handed over possession of the property, would wait for over 2 years to present the cheque. It has been asserted that the respondent has failed to prove the



existence of a legally enforceable debt and has instead misused the cheque that was issued purely as security.

5. Upon a pointed query, learned counsel for the petitioner has admitted that the petitioner did not reply to the legal notice sent by the respondent in relation to the dishonoured cheque.

6. Heard learned counsel for the petitioner and perused the relevant material available on record.

7. The contention of the petitioner involves disputed questions of fact that fall beyond the scope of this Court's inherent jurisdiction under Section 482 Cr.PC/528 of BNSS. It is not disputed that the petitioner has signed the cheque in question. The primary dispute revolves around whether the cheque was issued in discharge of a legally enforceable debt or liability, as alleged by the respondent or whether it was issued merely as a security instrument, as claimed by the petitioner. These are questions that require evidence and cross examination and cannot be conclusively determined at this stage.

8. Additionally, the allegation by the petitioner that the respondent misused the cheque issued as security and presented it after an unreasonable delay of 2 years without his consent also requires factual adjudication. The genuineness of these claims and the veracity of the allegations levelled by the respondent in the complaint in question will need to be tested during trial, where both parties will have the opportunity to lead evidence in support of their respective cases.



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9. While the learned counsel for the petitioner has vehemently argued that the complaint in question is meritless and is based on a fabricated narrative, the absence of a reply to the legal notice, *prima facie* undermines the claim of innocence of the petitioner to some extent. The petitioner’s failure to address the notice sent by the respondent also *prima facie* raises questions that can only be clarified during the trial.

10. In view of the above, this Court is not inclined to accept the prayer of the petitioner for quashing of the criminal complaint in question as well as summoning order Annexure P-2. The issues raised by the petitioner pertain to the merits of the case and involve disputed questions of fact that require a full fledged trial for resolution. Whether the cheque was issued in discharge of a legally enforceable debt or was misused by the respondent as alleged by the learned counsel for the petitioner are matters that lies squarely within the domain of the trial Court

11. As a sequel to the above, the instant petition, being devoid of any merit, stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

04.12.2024
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(MANJARI NEHRU KAUL)
JUDGE

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