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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23.04.2024

+ **CRL.M.C. 3068/2024**
NEERAJ PIPLANI

..... Petitioner

Through: Mr.M.K. Arora, Adv.

versus

THE STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Satinder Singh Bawa, APP.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 11857/2024 (Exemption)

1. Allowed, subject to all just exceptions.

CRL.M.C. 3068/2024 & CRL.M.A. 11858/2024

2. This petition has been filed under Section 482 Code of Criminal Procedure 1973, seeking quashing of complaint filed by respondent no.2 under Sections 138/142 of the Negotiable Instruments Act, 1881 being Complaint Case No. 238/2022 titled *Rajan Syal v. Neeraj Piplani*.

3. The above complaint has been filed by respondent no.2, alleging that the respondent no.2/complainant was employed with the petitioner as a Hardware System Engineer in the year 2002. It is alleged that the petitioner failed to pay the



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remuneration to the respondent no.2 on a timely basis and rather the same remained due for the last several months/years. In the month of January 2022, the petitioner requested the respondent no.2 for grant of additional time to clear the remuneration dues, stating that he was having certain difficulties to arrange sufficient funds. The respondent no.2 acceded to this request on account of the longstanding relationship he had with the petitioner. After some time had elapsed, again a similar request was made by the petitioner, and the respondent no.2 acceded to it, again. However, as the dues were not cleared for a long time, the respondent no.2 quit the job. On 01.08.2022, a total amount of Rs.39,92,324/- was alleged to be due and payable by the petitioner to the respondent no.2. Respondent no.2 alleges that in discharge of the abovesaid dues, the petitioner issued three cheques of Rs.5,00,000/-, Rs.6,00,000/- and Rs.18,27,392/-, respectively, in favour of respondent no.2 with an assurance to clear the remaining dues at the earliest. Upon presentation of the abovementioned cheques by the respondent no.2, they were dishonored with remarks 'Funds Insufficient'. Respondent no.2 sent a legal notice to the petitioner which was duly served upon him. The petitioner was summoned in the said complaint by the learned Metropolitan Magistrate (NI Act), Digital Court-01, West District, Tis Hazari Court vide its order dated 18.01.2023.

4. The petitioner challenged the said order by way of a Revision Petition, being Crl.Rev. No. 497/2023, titled ***Neeraj Piplani v. State (NCT of Delhi) and Anr.***, which has been



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dismissed by the learned Additional Sessions Judge-02, West District, Tis Hazari Courts vide its judgment dated 19.02.2024, holding that there was no infirmity in the order of the learned Trial Court summoning the petitioner in the said complaint.

5. The learned counsel for the petitioner submits that the complaint filed by the respondent no.2 is an abuse of process of the law, inasmuch as the petitioner has infact overpaid the respondent no.2 by crediting the account of the respondent no.2 on various occasions. The learned counsel for the petitioner further submits that respondent no.2 has misused the cheques that were given to the respondent no.2 as security during the period of the pandemic (Covid – 19) to make the petitioner feel secured of his position in the firm.

6. I do not find any merit in the present petition.

7. The learned Revisional Court, in its judgment dated 19.02.2024, has given a cogent reason for rejecting similar contention of the petitioner by observing as under:-

“18. In view of the aforesaid discussion, it is crystal clear that in revisionist powers, the present court can only see that whether the order is illegal or it has led to miscarriage of justice or has been passed without any jurisdiction. As I have discussed earlier, it was held in Adalat Prasad Case’s that order of taking cognizance, issuance of summons and the discharge of accused can only be subject matter of a proceedings under section 482 of the code as the district courts do not have the inherent power. The contention that the revisionist/accused has actually paid more amount than his liability is the matter of Trial.”



Similarly, the cheques were given as a security can be proved by the revisionist during the trial. The revisionists/accused persons cannot be discharged only on hearing argument on the stage of serving upon notice under Section 251 of the Cr.P.C. Similarly, the summoning order can be recalled by this court and no proceeding against the accused persons can be dropped under Section 258 of the Cr.P.C. As discussed, the law of land on this aspect is quite clear. The Hon'ble Supreme Court of India in Subramaniam Sethuraman vs. State of Maharashtra & Ors (2004) 13 SCC 324 has categorically ruled that "issuance of process under Section 204 is a preliminary step in trial contemplated in Chapter 20 (Section 251 to 259) Cr.P.C and is, therefore an interlocutory order, the same cannot be reviewed, reconsidered or recalled by the Magistrate...."

(emphasis supplied)

8. The contentions raised by the petitioner in the present petition are primarily the defence of the petitioner in the complaint case, which have to be tried and adjudicated upon only after considering the submissions and evidence of both the parties. This Court in exercise of its power under Section 482 of the Cr.P.C. cannot enter into the disputed question of facts and adjudicate upon them without evidence, so as to scuttle the complaint filed by respondent at a preliminary stage. The Supreme Court, while dealing with a similar issue, in its judgment of ***H.M.T Watches Ltd v. M.A. Abida & Anr.*** (2015) 11 SCC 776, has held that:

" 10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of



criminal complaint cases before the High Court, taking factual defences. 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. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplained with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. In Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure :

“17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter. is required is application of the well-known legal principles involved in the matter.



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22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.”

12. In *Rallis India Ltd. v. Poduru Vidya Bhushan*, this Court expressed its views on this point as under :

“12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion



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as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm.”

13. In view of the law laid down by this Court as above, in the present case the High Court exceeded its jurisdiction by giving its opinion on disputed questions of fact, before the trial court.”

(emphasis supplied)

9. In view of the above, I find no merit in the present petition. The same is accordingly dismissed. The pending application is also disposed of as infructuous.

NAVIN CHAWLA, J

APRIL 23, 2024/rv/am

[Click here to check corrigendum, if any](#)