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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 6166/2024, CRL.M.As. 23566-23567/2024
BHUPINDER SINGHPetitioner
Through: None.

versus

STATE NCT OF DELHI AND ANRRespondents
Through: Mr. Nawal Kishore Jha, APP for
State.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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01.10.2024

1. None present for the petitioner.
2. It is noted that even on the last date of hearing, the petitioner had sought an adjournment.
3. A perusal of the petition would show that the same has been preferred seeking quashing of the complaint case No. N.I. Act 26071/2021 titled as "Vinod Kumar Babuta Versus Bhupinder Singh & Anr" filed under Section 138 N.I. Act.

The petition is premised on the ground that no amount is due from the petitioner and moreover, that the debt is also time-barred. It is also stated that the complainant has failed to disclose the alleged amount in his ITR. It is further stated that the FIR No. 77/2021 came to be registered under Sections 420/406/34 IPC at P.S. Vikaspuri, Delhi which records that certain re-payments have been made. Further, it is stated that the payments made in the proceedings arising out of the said FIR have not been accounted for in the present case.



4. In the present case, the Petitioner had allegedly borrowed Rs 4 Crores from the respondent No.2, out of which he had returned Rs 2 Crores and the remaining 2 Crore rupees had to be repaid by the petitioner. After some failed attempts for settlement, the FIR bearing No. No. 77/2021 came to be registered under Sections 420/406/34 IPC at P.S. Vikaspuri, Delhi. Another attempt was made to settle and a settlement dated 23.02.2021 was arrived at in the mediation proceedings before the Mediation Centre, Dwarka Courts for a total sum of Rs. 1,80,00,000/- only. A sum of Rs. 55,00,000/- was paid to the respondent No.2 in cash and in lieu of the balance settled amount of Rs. 1,55,000/-, the cheques in question were issued. However, the same were dishonored upon presentation. The petitioner, in the bail proceedings under the aforesaid FIR, to show his bona fides, deposited Rs 55,00,000/- with the Registrar General of this Court on 03.08.2021. Afterwards, the impugned complaint case came to be filed. The petitioner has admitted his signatures on the subject cheques. Although the petitioner has deposited certain amount with the Registrar General, the same have not been released to the respondent No.2 and thus the complaint made for the total settled sum is not vitiated on this account.

5. Moreover, the grounds mentioned in the petition are factual in nature which cannot be enquired into at the stage of quashing and their veracity need to be tested at trial where necessary evidence is to be led to prove the said contentions. It would not be appropriate for this Court to express its opinion on disputed questions of fact, when the factual controversy is within the realms of possibility. A finding given on facts at this stage would deny the proper forum, i.e., the Trial Court an opportunity to independently assess the evidence led by the parties. At this stage, reference may be made to



some decisions of the Supreme Court on the aspect as to whether factual defences could be considered at the stage of quashing.

6. Recently in Sunil Todi v. State of Gujarat, reported as **(2021) SCC OnLine SC 1174**, the Court while relying on a decision in HMT Watches Ltd. v. M.A. Abida & Anr. reported as **(2015) 11 SCC 776** observed that whether there existed an outstanding liability or not is a question of fact, which is to be determined at the trial on the basis of evidence. The Court further emphasised that the above being a disputed question of fact cannot be resolved in the proceedings under Section 482 Cr.P.C.

21. Besides the distinguishing features which were noticed in Sampelly [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458 : (2017) 1 SCC (Civ) 126 : (2017) 1 SCC (Cri) 149] , there was another ground which weighed in the judgment of this Court. The Court adverted to the decision in HMT Watches Ltd. v. M.A. Abida [HMT Watches Ltd. v. M.A. Abida, (2015) 11 SCC 776 : (2015) 4 SCC (Cri) 552] to hold that whether the cheques were given as security constitutes the defence of the accused and is a matter of trial. The extract from the decision in HMT Watches [HMT Watches Ltd. v. M.A. Abida, (2015) 11 SCC 776 : (2015) 4 SCC (Cri) 552] , which is cited in the decision in Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845] is thus : (HMT Watches case [HMT Watches Ltd. v. M.A. Abida, (2015) 11 SCC 776 : (2015) 4 SCC (Cri) 552] , SCC p. 779, para 10)

“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 [M.A. Abida v. HMT Watches Ltd., 2014 SCC OnLine Ker 3842] 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.”

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53. In the present case, it is evident that the principal grounds of challenge which have been set up on behalf of the appellants are



all matters of defence at the trial. The Magistrate having exercised his discretion, it was not open to the High Court to substitute its discretion. The High Court has in a carefully considered judgment, analysed the submissions of the appellants and for justifiable reasons has come to the conclusion that they are lacking in substance.

7. More recently, in Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) & Anr., reported as **(2022) SCC OnLine SC 513**, the Supreme Court again highlighted that such a determination could only be carried out in a trial:-

“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.”

8. Considering the facts of the present case and the import of the judgements discussed hereinabove, I find no merit in the petition. The petition is dismissed alongwith the pending applications.



9. Needless to state that the observations made hereinabove are for the disposal of the present petition and would not have a bearing on the outcome of the trial.

MANOJ KUMAR OHRI, J

OCTOBER 1, 2024

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