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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-1143-2025 (O&M)
Reserved on : 17.02.2025
Date of decision: 20.02.2025**

Ramandeep Singh Gandhi**...Petitioner**

Versus

Tanu Bhandari**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Rakesh Bhatia, Advocate
for the petitioner.

Ms. Vandana R. Kohli, Advocate
for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) by the petitioner seeking quashing of a Criminal Complaint bearing NACT No. 35946/2023, titled as ***Tanu Bhandari vs. Ramandeep Singh Gandhi and another***, filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'the Act'*), which is pending before the Court of learned Judicial Magistrate First Class, Ludhiana as well as for quashing of order dated 02.03.2024 passed in the said complaint, thereby summoning the petitioner as accused.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned complaint had been filed by the respondent/complainant against the petitioner on the allegations that M/s Rocktech India, which is sole proprietor concern of the petitioner, had purchased rubber conveyer belts from the firm of the respondent. An amount

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of Rs. 10,88,750/- was due towards the petitioner. To discharge his legally enforceable liability, cheque for the aforementioned amount of money had been issued by the petitioner in favour of the respondent. The said cheque was presented for realization but was dishonoured on 03.07.2023 and 09.08.2023 with remarks 'insufficient funds'. On request of the petitioner to present the same again, the respondent presented it but the same was dishonoured on 15.09.2023 with remarks 'payment stopped by the drawer'. The respondent served requisite legal notice but the petitioner failed to make payment of the cheque amount, thereby compelling the respondent to file the aforementioned complaint. On considering the preliminary evidence produced by the respondent, learned trial Magistrate, vide impugned order dated 02.03.2024, issued process against the petitioner and his firm.

3. By filing the present petition, the petitioner has laid challenge to aforesaid complaint as well as the summoning order on the grounds that the same are not sustainable in the eyes of law. It is submitted by learned counsel for the petitioner that while filing the complaint, the respondent concealed the fact that the petitioner had given a reply to the legal notice served by her upon him and his firm intimating that he had made the payment of the entire amount of the cheque in question through RTGS till 12.09.2023. In fact, the cheque in question was issued by way of security on the asking of the respondent. After issuance of this cheque, the petitioner had paid the entire amount of the cheque by four different transactions through RTGS, which fact had not been disputed by the respondent. On the date of filing of the complaint, there was no legally enforceable debt against the petitioner.

However, this fact had also been concealed by the respondent. Accordingly, it

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is urged that the impugned complaint and the summoning order are liable to be set aside since the provisions of Section 138 of the Act are not attracted and that the petition deserves to be allowed.

4. Respondent/complainant has filed reply taking preliminary objections. It is submitted therein and learned counsel for the respondent has argued that the petitioner had issued three cheques, which were presented for realization. Two of them were dishonoured with the remarks 'funds insufficient', whereas the third cheque was dishonoured with the remarks 'payment stopped by the drawer'. It has also been submitted that there was Whatsapp chats with the petitioner and the proprietor of the respondent-firm showing that the former had admitted that an amount of Rs. 10,66,100/- was payable by him. It is further submitted that in fact there were business transactions between the petitioner and the respondent since the year 2017. An amount of Rs. 10,66,100/- was payable by the petitioner to the respondent as on 24.08.2018 and after including the interest, an amount of Rs. 10,88,750/- was payable by him. The petitioner had paid the previous balance amount and not the amount, which was actually payable to the respondent against the cheque in question. It is, therefore, argued that there is no merit in the present petition and the same is liable to be dismissed.

5. This Court has heard learned counsel for the parties at considerable length and has also gone through the material placed on record.

6. Annexure P-1 is the copy of the complaint as filed by the respondent against the petitioner and his firm and on a perusal of the contents thereof, it is explicit that the case as set up by the respondent was that an amount of Rs. 10,88,750/- was payable by the petitioner to discharge his

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legally enforceable liability, which had accrued on account of purchase of rubber conveyor belts from the firm of the respondent and it was to discharge this liability that the cheque in question had been issued by the petitioner and the same had been dishonoured. The petitioner has placed on record Annexure P-3, which is a copy of the reply to the legal notice served upon him and his firm by the respondent and a perusal of the same reveals that a specific stand had been taken to the effect that they had placed order worth Rs.14,88,570/- with the respondent on 08.04.2023. An amount of Rs. 4,00,000/- was paid in advance through NEFT transaction and a cheque for the remaining amount i.e. Rs. 10,88,570/- was issued as security. The said amount was subsequently transferred in the account of the respondent through RTGS by making part payments on 13.07.2023, 19.07.2023, 17.07.2023 and 28.08.2023. It was asserted that instead of returning the security cheque, the respondent had presented the same with its banker and when the petitioners came to know about this fact, the payment was stopped by them.

7. During the course of arguments, learned counsel for the respondent has very fairly conceded the fact that an amount of Rs. 10,88,000/- was transferred in the bank account of the respondent by the petitioner by way of RTGS transactions made on the aforesaid four dates in July and August, 2023. However, the stand as taken by the respondent is that the said transactions were with regard to liability, which had accrued to the petitioner during the year 2018 and not qua the liability, which had accrued on account of purchase of fresh material in the year 2023. The question that falls for consideration before this Court is as to whether in the peculiar facts and circumstances of the present case, it can be presumed that the amount of

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Rs.10,88,750/-, as deposited by the petitioner in the account of the respondent, was qua the same amount of money qua which the cheque in question was issued and after the said transfer, was there any legally enforceable debt to be discharged by the petitioners or not ?

8. Before delving into the above point, this Court considers it appropriate to refer to the provisions of Section 138 of the Act at the very outset. As per this section, when any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, the person who issues or indorses such a cheque, is liable for punishment in terms thereof. It will also be appropriate to refer to Section 82 of the Act, as per which, if the payment is made in due course of the amount due thereof, then the liability stands discharged. It is well settled that the words 'due course' when read with Section 138 of the Act mean 'within the time specified in the notice'. Meaning thereby that the moment the holder of the cheque accepts and admits the receipt of the entire cheque amount, the provisions of the Act stop applying because the dishonour of a cheque is punishable under Section 138 of the Act only on existence of a legally enforceable debt or liability.

9. It is also important to mention that Section 118 of the Act raises a presumption in favour of the holder of a cheque for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption is only for a consideration of cheque amount, which as per Section 138 of the Act has to be either legally enforceable debt

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or any other liability. On a cumulative reading of Sections 118 and 138 of the Act, it becomes clear that in view of statutory mandate of Section 82 of the Act, if before filing of the complaint in terms of Section 138 of the Act, the complainant receives the amount qua the cheque amount, accepts and admits receipt of the entire cheque amount, Section 82 of the Act comes into operation and triggers the discharge of the entire liability mentioned in the cheque.

10. Now coming to the facts of the present case. Admittedly, the cheque in question was issued on 17.06.2023. The same amount, which had been mentioned in this cheque, was transferred in the account of the respondent through RTGS by making part payments by the petitioner during the period from 13.07.2023 to 28.08.2023. Legal notice was issued on 04.10.2023 and reply thereto had been issued on 07.11.2023. The complaint was filed on 06.11.2023. Meaning thereby that as on the date of filing of the complaint, the amount of cheque in question was deposited by the petitioner through RTGS in the account of the respondent. The respondent has claimed in her reply that there were three cheques, which were dishonoured. However, this plea/averment is against the record because in her legal notice itself, copy of which has been placed on record itself, it has been mentioned that it was one cheque, which had been dishonoured thrice and not three cheques. Then, interestingly in the complaint as well as in the legal notice, it has been mentioned that an amount of Rs.10,88,750/- was payable by the petitioner and the cheque in question was issued to discharge that particular legal liability. Meaning thereby that as per own case of the respondent, the cheque in question was issued to discharge the liability of the same amount as

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mentioned in the cheque and that was the only liability at the relevant point of time. As such, now it does not lie in the mouth of the respondent to say that the cheque in question was issued on account of some previous transaction or the amount, which was transferred by way of RTGS was with regard to those transactions and not with regard to the amount of cheque in question. As per claim of the petitioner, the cheque in question was issued by way of security cheque and this fact has also not been specifically controverted by the respondent either in her reply or during the course of arguments.

11. At the cost of repetition, it may be mentioned that the cheque in question was issued on 17.06.2023 and the payment of the same amount of money had been transferred, though by four different transactions, in the account of the respondent by the petitioner during the period from 13.07.2023 to 28.08.2023, i.e. after the issuance of the cheque in question but before filing of the complaint. When as per own case of the respondent, the cheque in question was issued to discharge the only legally enforceable liability, which was existing against the petitioner at the time of issuance thereof, therefore, there is no hesitation in saying that once the payment of the same amount had been made through RTGS by the petitioner before filing of the complaint, then his liability stood discharged and since no legally enforceable debt was existing as on the date of filing of the complaint, therefore, the dishonour of this cheque on 15.09.2023 subsequent to payment of amount thereof did not attract punitive offence under Section 138 of the Act since once the respondent accepted the money qua the cheque amount, the same cannot be considered to be an instrument to launch prosecution for claiming

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some other amount, for which, even otherwise, no allegation had been made in the complaint itself.

10. Accordingly, as per the discussion made above, the present petition is allowed. The impugned complaint as well as the summoning order including all the subsequent proceedings having arisen therefrom are hereby quashed.

20.02.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>