

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-17866-2025 (O&M)

Date of Decision: 03.04.2025

ANUJ DANG

...Petitioner

V/S

SUNIL DUDEJA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shiv Kumar, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 for quashing the complaint bearing CIS No. NACT/5035/2023 titled as “*Sunil Dudeja Vs. Anuj Dang*” dated 06.12.2023 filed under Section 138 read with Sections 141 and 142 of Negotiable Instruments Act, 1881 upto date mended (Annexure P-7) and the summoning order dated 27.09.2024 (Annexure P-10) pending before learned Judicial Magistrate Ist Class, Faridabad.

2. Learned counsel for the petitioner *inter alia* contends that respondent has mis-used the post dated cheques given by the petitioner in terms of the Agreement (Annexure P-1) and further refers to Clauses II, III, IV and VI of the Agreement. Further, in Clause VI of the Agreement, the timeline with regard to encashment of the cheques in question have been duly recorded and admittedly, the respondent has not acted in terms of Clause III. The respondent has committed breach of the Agreement, effected between the parties and further by twisting the real facts, has instituted complaint under Section 138 of Negotiable Instruments Act, 1881. Further, the SCO, which was required to be transferred in the name of the petitioner, the respondent No. 3 has entered into an agreement to sell with the third party, who has filed



a civil suit and got a stay on alienation of the SCO in question. Further, the respondent has conveniently suppressed all the material facts and has misused the security cheques by falsely implicating the petitioner, with an oblique motive to wriggle out of the agreement. It is apparent that respondent has not adhered to the terms and conditions of the Agreement (Annexure P-1) and as such, there is no subsisting legally enforceable debt for which, a complaint can be instituted under Section 138 of Negotiable Instruments Act, 1881. Learned counsel further placed reliance upon the judgment of Hon'ble Supreme Court passed in *M/s. Indus Airways Pvt. Ltd. and Others Vs. M/s. Magnum Aviation Pvt. Ltd. and Another* 2014(2)RCR (Criminal) 494.

3. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court does not find any force in his arguments advanced as the probable defence of the petitioner, however, convincing it may seem, cannot be appreciated into at this stage by this Court and the disputed questions of facts raised by the petitioner can only be appreciated by learned trial Court on the basis of evidence adduced by both the parties.

4. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.



5. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in **Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another** 2022 SCC Online SC 513 and speaking through Justice Hrishikesh Roy, made the following observations: -

“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 unmerited 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.”

6. A two Judge Bench of the Hon'ble Supreme Court in **HMT Watches Ltd Vs. M.A. Abida** (2015) 11 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.”

7. In **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited** (2016) 10 SCC 458, decided by the Hon'ble Supreme Court, following observations were made: -

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint.



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The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

8. In view of the above discussion, this Court cannot examine the probable defence of the petitioner set up in the present petition and scuttle the proceedings before the trial Court. The disputed questions of fact and the probable defence of the petitioner can only be seen by the trial Court on the basis of evidence adduced by the parties.

9. Accordingly, present petition stands dismissed being bereft of any merit.

10. However, petitioner would at liberty to take all the pleas raised in the present petition at the appropriate stage during the course of trial.

11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

03.04.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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