



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

137

CRM-M-25665-2025 (O&M)
Date of decision: 12.05.2025

Naresh Paliwal @ Naresh Kumar

....Petitioner

Versus

Mukesh Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Jammu, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 528 of BNSS, 2023, is for quashing of criminal complaint No.890-NACT-2023 dated 19.09.2023 (Annexure P-1) filed under Section 138 of the Negotiable Instruments Act, 1881, by the respondent titled as “Mukesh Kumar vs Naresh Paliwal”, as well as the summoning order dated 03.01.2024 (Annexure P-2), passed by learned Judicial Magistrate Ist Class, Fatehabad, vide which the petitioner has been summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioner, *inter alia*, contends that the complainant/respondent is not known to the petitioner. Further there is no transaction taken place between the petitioner and respondent. The cheque, in question was misplaced and the petitioner has informed the concerned Bank for stoppage of the payment. Thereafter, the complainant has somehow found the cheque, in question and misused



the same by filling Rs.5.00 lacs. There is no evidence available on record to show that the complainant/respondent has the capacity to pay Rs.5.00 lacs. Further the petitioner has gone to Dubai on 30.07.2023 and returned to India on 05.08.2023 as discernible from the copy of Passport (Annexure P-3) and air ticket (Annexure P-4), as such, the petitioner is not present in India on 02.08.2023, as alleged in the complaint (supra).

3. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, this Court is of the considered opinion that it cannot examine the probable defence of the petitioner set up in the present petition, at this stage.

4. It is settled law that disputed questions of fact can only be adjudicated upon by learned trial Court after giving adequate opportunities to the parties to adduce their evidence. The High Court is obliged to make a just and equitable choice and not go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, at this stage, 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 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.”

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. 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 foregoing discussions and after considering the submissions advanced by learned counsel for the petitioner, this Court is of the considered opinion that the grounds taken in the present petition, for quashing the complaint (supra) as well as the summoning order dated 03.01.2024 (Annexure P-2), do not warrant interference at this stage. The allegations raised by the petitioner involve disputed questions of fact which can only be adjudicated upon after the parties have led evidence before the learned trial Court.

9. Accordingly, the present petition is dismissed.

10. Nothing expressed hereinabove shall be construed as an expression of opinion on merits of the case.

(HARPREET SINGH BRAR)
JUDGE

12.05.2025

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