

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28985-2025 (O&M)

Date of Decision: 26.05.2025

Vikas Turan

... Petitioner

VS.

M/s Sethi Fruit Co.

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Chaudhary, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 BNSS has been filed by the petitioner seeking to quash the complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) bearing NACT No.37821-2022 dated 10.06.2022 (Annexure P5) pending before JMIC, Gurugram qua the petitioner.

(2). Learned counsel for the petitioner contends that he is engaged in the business of poultry and breeding farm and he went to the house of respondent allegedly on his call and while returning he found that two cheques in question were missing from his pocket and as such, he reported the missing of those cheque to the police vide DDR GD entry No.009 dated 31.12.2019 and also approached the Axis Bank, Sector 3, Karnal and got stopped the payment in respect of the said cheques. He submits that the respondent has misused the provisions of Section 138 of NI Act and lodged the subject complaint against the petitioner.

(3). On the other hand, a perusal of the complaint (Annexure P5) filed by the respondent through its proprietor Dharminder Sethi, would show that he advanced a friendly loan for a sum of Rs.7 lakhs in the month of

January, 2021 and the petitioner assured him to repay the said loan within one year and in order to discharge his debt liability, the petitioner even handed over a post date cheque, however, on presentation of the said cheque before the Bank, the same was returned with remarks “payment stopped by drawer” vide memo dated 24.04.2022.

(4). Heard learned counsel for the petitioner.

(5). While exercising the powers under Section 482 of the CrPC or Section 528 BNSS at the instance of an accused, the High Court ought to be circumspect. It should not interfere unless some unimpeachable and uncontroverted evidence is placed on record to indicate that the allegations made are bereft of any merit. Thus, in a case where the basic averments have been made which point to the issuance of the cheque and its dishonour; in the absence of any unimpeachable and uncontrovertible evidence, the defences such as the existence of liability etc. are a matter of trial.

(6). Such inherent power should be exercised very sparingly and with circumspection. The Court, at this stage, is not to embark upon an inquiry as to the reliability or genuineness of the allegations made in the complaint and only if the complaint on the face of it does not make out any case against the accused or if any evidence of an unimpeachable nature is produced to support the case of the accused, the Court can exercise its jurisdiction under Section 528 BNSS.

(7). In the present case, when counter-allegations or disputes of fact exist which are generally considered matters for trial and not for summary quashing at the preliminary stage and being as such, the existence of such factual disputes or counter-allegations does not, by itself, warrant the

quashing of proceedings under Section 138 NI Act. Instead, these issues are to be adjudicated based on evidence during the trial.

(8). In view of the above discussion, there is no merit in the present petition and the same is accordingly dismissed.

26.05.2025
V.Vishal

(Sandeep Moudgil)
Judge

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

Yes/No
Yes/No