



CRM-M-43653-2024

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

CRM-M-43653-2024

Decided on: 09.01.2025

Surender

..... Petitioner

Versus

Rakesh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Chirag Wadhwa, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of Criminal Complaint bearing Complaint case No.NACT 3189/2020 dated 02.11.2020 titled as Rakesh vs. Surender, pending in the Court of learned JMIC Karnal, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), alongwith all subsequent proceedings arising therefrom including the summoning order dated 01.04.2022.

2. Succinctly, facts of the case are that respondent-complainant instituted the impugned complaint under Sections 138, 142 and 143 of the Act against the petitioner. It has been alleged in the complaint that the petitioner entered into an agreement to sell with the respondent for an amount of Rs.10 lacs. The petitioner received an amount of Rs.3,99,000/- as earnest money from the respondent. It was alleged that due to some reason, the said deal could not be finalized between the petitioner and the respondent and the agreement was cancelled. The petitioner in discharge of his legal liability towards the respondent, issued a cheque bearing No.000597 dated 30.07.2020 for an amount of Rs.3,99,000/- drawn on Oriental Bank of Commerce, from his bank account. On the presentation of



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the said cheque, it was returned back vide memo dated 10.09.2020 with remarks 'Payment stopped by drawer' and thus, the cheque issued by the petitioner was dishonoured. Legal notice dated 05.10.2020 was served by the respondent. It was alleged that the said notice was duly served upon the petitioner but despite that he did not make the payment of the cheque amount. Hence, the said complaint was filed for the prosecution of the petitioner. Subsequent to the filing of the complaint, learned trial Court having found a *prima facie* case against the petitioner, summoned him vide impugned order dated 01.04.2022. Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously prosecuted in the impugned complaint. He submits that the respondent has relied upon the agreement to sell dated 27.04.2018 allegedly executed by the petitioner. However, perusal of the agreement would show that the same is executed by one Salinder son of Dawa Singh. He, thus, submits that petitioner has not entered into the agreement to sell as alleged in the complaint. He submits that legal notice instead of having been issued to Salinder, has been served upon Surender son of Hawa Singh, thus, the identities are different. He has submitted that in the facts and circumstances, there is no legal liability to be discharged by the petitioner towards the respondent. He submits that by reading the statutory provisions of Section 138 and 142 of the Act, prosecution of the petitioner is nothing but an abuse of the process of the Court, however, learned trial Court has failed to appreciate the same and thus, has illegally passed the impugned summoning order dated 01.04.2022.



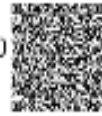
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It is submitted that the impugned complaint and summoning order being in violation of the statutory provisions of Section 138 of the Act, deserve to be quashed.

4. The Court has heard learned counsel for the petitioner and perused the record. On appreciation of the impugned complaint and the summoning order, it is deciphered that the respondent filed the impugned complaint against the petitioner on the allegations that the cheque issued by the petitioner for an amount of Rs.3,99,000/- in favour of the respondent as discharge of his legal liability, was dishonoured on its presentation. Legal notice was issued, but the petitioner failed to pay the cheque amount. Precise submission made by counsel for the petitioner is regarding the identity of the petitioner allegedly to be different from the person who had entered into the agreement to sell. The record would show that after filing the complaint, the respondent had filed an application for correction of the name of the accused-petitioner. The issues raised by counsel for the petitioner before this Court are entirely disputed question of facts, which can be determined only on the appreciation of the evidence led by both the sides. Learned trial Court on finding a *prima facie* case against the petitioner, has summoned him vide impugned order dated 01.04.2022. At the time of summoning of the petitioner, learned trial Court as per law settled was to appreciate whether a *prima facie* case for the prosecution of the petitioner is made out or not. Having found the same, the petitioner has been summoned. The disputed questions of facts cannot be answered by this Court in its inherent jurisdiction.

5. Hon'ble Supreme Court in HMT Watches Ltd. vs. M.A.



Abida and another, 2015(2) RCR (Civil) 497, in para No.10 of the judgment, has held as under:

“10. Having heard learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. 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. The High Court further erred in observing that [Section 138\(b\)](#) of N.I. Act stood uncomplied, even though the respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

6. Hon’ble Supreme Court in **Rajeshbhai Muljibhai Patel and others vs. State of Gujarat and another, 2020(2) RCR (Criminal) 163** has held that the disputed questions of facts, if involved needs to be adjudicated after the parties lead evidence and the complaint under Section 138 of the Act, ought not to have been quashed by the High Court under Section 482 Cr.P.C.

7. In the present case, the petitioner has denied the execution of

the agreement and rather has submitted that the agreement was executed by one Salinder and not by himself. The petitioner has not uttered a word explaining the circumstances in which he had issued the cheque in question in favour of the respondent, thus, there are disputed questions of facts involved in the present case, which cannot be answered by this Court while exercising jurisdiction under Section 482 Cr.P.C. The petitioner would be required to prove his case by leading evidence and as such the contention of the petitioner cannot be appreciated by this Court. In the above cases, Hon’ble Supreme Court has held that High Court should not express its views on the disputed questions of facts, which required to be proved by leading evidence.

7. Weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no merit in the present petition. Hence, the same is dismissed.

8. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

09.01.2025			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No



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It is submitted that the impugned complaint and summoning order being in violation of the statutory provisions of Section 138 of the Act, deserve to be quashed.

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