

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

126

**CRM-M No. 37506 of 2025 (O&M)
Date of Decision :27.08.2025**

**NITIN NAROTTAM MISTRY ALIAS MISTRI NITIN
NAROTTAMBHAI**

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

..... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present : Mr. Sunny Kadiyan, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, Addl. A.G., Haryana.

SURYA PARTAP SINGH, J. (Oral):

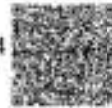
CRM-32044-2025

Application is allowed as prayed for and Annexures P-15 to P-20 are taken on record.

CRM stands disposed off.

CRM-M No. 37506 of 2025

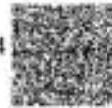
1. By invoking inherent jurisdiction of this Court vested in it by virtue of 528 of Bharatiya Nagrik Surakhsa Sanhita 2023, the present petition has been filed by the petitioner under Section 528 of Bharatiya Nagrik Surakhsa Sanhita 2023. By virtue of this petition, the petitioner is seeking for quashing of complaint No.NACT-1265 of 2022 and the order, whereby the learned Judicial Magistrate Ist Class summoned the petitioner for the commission of offence punishable under Section 138 of Negotiable Instruments Act 1881 dated 12.12.2022. The petitioner is seeking the quashing



of complaint, and also the above mentioned order, on the ground that the above mentioned complaint filed by the respondent No.2. is an abuse of process. According to petitioner he is involved in a real estate business in the name of Sai Corporation and Construction and that through his friend Dr. Satyendra Bimalparsad Singh, he came into contact of respondent No.2. who was running a business of finance under the name of Durga Finance. According to petitioner he was in need of money, and therefore, borrowed Rs.15,00,000/- from Durga Finance and as a security for the refund of payment of above mentioned loan, he had to issue few signed blank cheques and handed over the same to the respondent No.2. According to petitioner he has already returned the above mentioned loan amount but the respondent No2 who is looking after the entire affairs of Durga Finance misused the above mentioned security cheques and by taking advantage of signed blank cheques, issued by petitioner, he has launched the prosecution for the commission of offence punishable under Section 138 of the Act.

2. Heard.

3. It has been contended by learned counsel for the petitioner that by taking undue and illegal advantage of the faith and trust repose by the petitioner, upon the respondent No.2, the respondent No.2 has launched the present prosecution. According to learned counsel for the petitioner loan of Rs.15,00,000/- was advanced by Durga Finance and not by the respondent No.2. By concealment of facts and by producing forged and incorrect documents before the trial Court the respondent No.2 has launched a prosecution for the commission of offence under Section 138 of Negotiable Instrument Act, 1881, against the petitioner. It has been further contended by

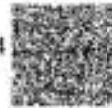


learned counsel for the petitioner that with regard to transaction of money between the petitioner and the respondent No.2, when fraud was played by the respondent No.2, the FIR was also lodged by crime branch police Station under the instructions of Commissioner of Police, District Surat, Gujarat. While referring to certain documents placed on record with regard to transactions between the parties the learned counsel for the petitioner has contended that the security cheques have been misused by the respondent No.2 and therefore, the complaint filed by the respondent is unsustainable and deserves to be dismissed.

4. The record has been perused carefully and the arguments addressed on behalf of the petitioner have been considered.

5. A perusal of contents of the petition vis-a-vis other documents available on record shows that the petitioner is not disputing the fact that he was having some transactions with regard to payment of money with the respondent No.2 and that he had issued blank cheques as security for the repayment of above mentioned loan. Now the question arises as to whether the loan was advanced by respondent No.2 or by the firm owned by him, namely Durga Finance. It is also pertinent to mention here that the allegations of petitioner with regard to forging of documents, to show existing liability of petitioner towards respondent No.2, the appreciation of evidence is a pre requisite. Unless the parties are given opportunity to lead evidence it cannot be determined as to whether there was any existing liability of the petitioner, towards the respondent No.2, or not?

6. Merely on the basis of pleading of petitioner, to the effect that he was not having existing liability towards the respondent No.2, this question



cannot be ascertained whether above mentioned claim of the petitioner is true or not. It is also relevant to mention here that it is the claim of the respondent No.2, before the learned trial Court, that the cheque was issued by petitioner in discharge of his existing liability. Therefore, the burden is upon the respondent No.2 to prove the same. If the respondent No.2 would fail to prove the above mentioned fact his complaint is bound to fail.

7. In view of above mentioned facts and circumstances of this case, in my opinion, without giving opportunity to lead their respective evidence and without appreciating the same this conclusion cannot be drawn as to whether the petitioner was having any existing liability towards the respondent No.2 or not, and also as to whether he had issued any cheque or not. Therefore, in the present petition, there is no scope to draw an inference, at this stage, that there is any perversity in the summoning order passed by the trial Court or that prosecution of petitioner under Section 138 of the Act at the instance of respondent No.2 deserves to be quashed.

8. As a sequel to above mentioned observations, this Court finds that the above mentioned quashing petition is devoid of merit and deserves dismissal. The same is hereby dismissed, accordingly.

(SURYA PARTAP SINGH)
JUDGE

27.08.2025

Manoj Bhutani

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