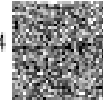


131

2025.PHHC.010484



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63337-2024
DECIDED ON: 16.01.2025

MAGHAV GUPTA

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Yadav, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court has been invoked under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS,2023) seeking quashing of the impugned complaint under Section 138 of Negotiable Instruments Act, 1881 (“NI Act”) filed by respondents No.2 and 3 as well as summoning order dated 24.05.2023 (Annexure P-2), whereby the petitioner was summoned, arising out of complaint No. NACT/1021 of 2023, dated 18.04.2023 titled as ***“Ravinder Rahul and others vs. M/s Rekhas House of Cotton Private Limited”***.

2. The case in nutshell is that the complainant the proprietor of M/s ARS Global Textiles, submits that the petitioner No.1 along with other co accused persons have been conducting the business of purchasing handloom goods from Panipat with them and therefore are personally responsible for paying outstanding debts. They are also jointly and severally liable for all

liabilities incurred by the company namely M/s REKHAS House of Cotton Pvt.Ltd through its director Sh,Maghav Gupta (Petitioner). On 01.03.2023. petitioner issued a cheque (No. 005992) for Rs. 56,45,558 in favour of the complainant's firm, drawn from their HDFC Bank account. However, when the complainant presented the cheque for collection through their State Bank of India branch, they received a memo dated 04.03.2023. stating "Funds Insufficient".

3. The learned counsel for the petitioner has contended that the material supplied to the petitioner company is only of 14 lakhs and not of 56 lakhs as is alleged by the complainant in his complaint and out of that only 4 lakhs is pending against the firm.

4. He further argues that trial court in sheer violation of section 202 CrPC has summoned the petitioner who is a resident of Goa, which in itself is illegal as prior inquiry is to be conducted if the person sought to be summoned is residing beyond territorial jurisdiction of the court issuing the summons therefore prays that summoning order dated 24.05.2023 be set aside.

5. Heard.

6. This Court after going through the submissions and pleadings made by the petitioner would opine that, on the facts it is evident from Para No.4 of the petition that the petitioner in his petition has specifically admitted that there was financial transaction between the complainant firm and petitioner company and only dispute is qua the amount as complainant is alleging 56 lakhs is pending on the other hand the petitioner is submitting that only 4 lakhs is outstanding out of total 14 lakhs.

7. A perusal of the aforesaid paragraph would clearly depict that it is a case where facts are being disputed on merit.

8. In addition to summarize the principles of law with regard to quashing of the entire proceedings u/S 138 of the Act, it will be relevant to take note of few judgement of Apex Court. In ***M.M.T.C. Ltd. & Anr. vs. MedchlChemicals and Pharma (P) Ltd. & Anr : (2002) 1 SCC 234***, the Apex Court has held as under:

"17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability."

9. In the case of ***Rangappa vs. Sri Mohan : (2010) 11 SCC 441***, the opinion of Justice K.G.Balakrishnan for a three judges Bench is relevant to be noted as under:

"26. ... we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."

10. In the case of ***Rajeshbhai Muljibhai Patel vs. State of Gujarat (2020) 3 SCC 794***, it has been held by the Apex Court that whenever the

facts are disputed, the truth should be allowed to emerge by weighing the evidence. The Apex Court has opined as under:

"22.When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act."

11. So far as quashing of the criminal proceedings in exercise of powers u/s 528 of the BNSS, 2023 is concerned, the judgements of the Apex Court in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haque : (2005) 1 SCC 122 and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315***, are the guiding factors and limbs of such powers, were the prima facie on the facts and materials available before the Court, it is found that no case as alleged is made out then such proceedings can be quashed in exercise of the powers.

12. In the case of ***Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330***, the Apex Court has held as under:

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is

not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."

13. Further dependence can be placed upon judgment titled as ***Rathish Babu Unnikrishnan vs The State (Govt. of NCT of Delhi) & Anr., 2022 (2) RCR (Criminal) 871***, wherein the Apex Court has held as under:

"16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint."

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.

18. *Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."*

14. From the above judgements, it is crystal clear that at the stage of summoning whether there is a legally subsisting liability or not, is not to be considered by the Magistrate. It is to be looked into during the trial and the burden to prove that there was no existing debt or liability, is on the accused/respondents, which is to be discharged during the trial. Section 139 of the Act, raises presumption that the cheque was issued for a legally existing debt and such presumption can be rebutted by the respondent/accused, during the course of the trial. At the time of exercise of jurisdiction u/s 528 of the BNSS, 2023, the Court is not required to evaluate the truthfulness or otherwise the allegations levelled by the complainant against the accused whatever may be the defences of the accused, those defences can be examined only during the trial. Even if the accused is successful in showing some suspicion or doubt in the allegations levelled by the complainant, it would be impermissible to discharge the accused before trial. If the Magistrate is satisfied that prima facie case is made out, fulfilling all the ingredients of Section 138 of the Act. In view of the presumptions U/s 139 of the Act, such complaints cannot be quashed on the basis of the averments made by the accused with regard to his defences.

15. As far as his another contention is concerned qua non compliance of section 202 CrPC (Now section 225 of BNSS,2023) is concerned, the concept of “taking cognizance of the offence but not the offender” in the context of the Code of Criminal Procedure, 1973 (“CrPC”), is not applicable to proceedings under Section 138 (“NI Act”). Section 138 is self-contained in so far as it prescribes the procedure to conduct trial, creates an offence and prescribes the punishment. Moreover the proceedings under the act are summary in nature and section 142 (“NI Act”) specifically states that no court shall take cognizance of an offence under Section 138 unless a written complaint is made by the payee within a specified time frame. This provision effectively overrides general procedures outlined in the CrPC, reinforcing that cognizance must be based on a clear identification of both the offence and the offender.

16. Further To establish the commission of an offence of dishonour of cheque each of the ingredients under Section 138 of the (“NI Act”) has to be proven, the Supreme Court in “*Nishant Aggarwal v. Kailash Kumar Sharma, reported in AIR 2013 SC 2634*”, interpreted Section 138 of the “NI Act” and laid down that Section 138 has five components, namely: 1. drawing of the cheque; 2. presentation of the cheque to the bank; 3. returning the cheque unpaid by the drawee bank; 4. giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and 5. failure of the drawer to make payment within 15 days of the receipt of the notice.

17. In the present case the complainant respondent no.3 through its proprietor namely Ravinder Ruhel Respondent No. 2 while stepping in the witness box has duly presented the documents i.e original cheque, return

memo, legal notice, postal receipt before the trial court proving all the essentials for instituting complaint under section 138 “NI Act”. The identity of the drawer of the cheque, being the first ingredient under Section 138 of the NI Act, is a mandatory requirement for establishing the cause of action for prosecution which is established in the present case therefore the intent of “NI Act” is itself very clear that there is no statutory force to conduct a prior inquiry in terms of section 202 CrPC (Now section 225 of BNSS,2023) when the act speaks for itself.

18. In the light of the aforesaid judgements of the Apex Court and the admitted fact by the petitioner that disputed question of facts is involved this Court deems it appropriate not to invoke its inherent powers under Section 528 of BNSS, 2023 as the same can be adjudicated on the strength of evidence which can only be lead before the trial Court. Hence, the present petition being devoid on merits stands dismissed.

16.01.2025

Sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No