



CRM-M-2187-2025

-1-

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

CRM-M-2187-2025 (O&M)

Decided on: 16.01.2025

Jasvir Singh Sindhu

..... Petitioner

Versus

Bharat Arora

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Anoop Verma, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of Criminal Complaint bearing No.867/2021 dated 04.03.2021, registered under Sections 138/141 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), and summoning order dated 22.04.2022 and subsequent proceedings arising out of the same.

2. Succinctly, facts of the case are that the petitioner and respondent had business dealings. The petitioner issued a cheque, which on presentation was dishonoured. The respondent then filed a complaint under the Act for the prosecution of the petitioner. On leading the preliminary evidence, the trial Court summoned the petitioner vide impugned summoning order dated 22.04.2022. 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 as he was just an authorized signatory of the cheque, whereas, the account was being maintained by the company. He, thus, submits that the essential ingredients of Sections 138 and 141 of the Act, are



CRM-M-2187-2025

-2-

not made out. He submits that the petitioner did not issue cheque to the respondent in his personal capacity. He submits that the respondent has not implicated any other Director of the company as accused. He, thus, submits that the petitioner cannot be held vicariously liable for the illegality alleged by the respondent. It has been submitted that the respondent failed to fulfill the mandatory requirement by producing Form 32 under the Companies Act, 2013 for establishing his personal capacity. It is submitted that as per Section 141 of the Act, liability cannot be fastened on mere authorized signatory unless and until he was in charge or responsible for the conduct of the business of the company. He submits that the company issued the purchase order dated 28.08.2020 and at the time of placing the order, the company through its Director instructed the petitioner to issue a cheque of Rs.15,00,000/- and accordingly, the cheque of Rs.15,00,000/- was issued towards the supply of material under purchase order. He submits that the respondent sent an email to the accused company asking for new cheque, as the cheque No.003352 got misplaced and requested to stop the payment of the same. He submits that the complainant requested for the new cheque in place of above cheque No.003352. He submits that dishonour of the cheque issued by the accused company was due to stoppage of payment, as the respondent-complainant breached the contract, which was duly communicated to the respondent through email. Despite that respondent presented the said cheque and got it dishonoured and thus, the ingredients of Section 138 of the Act are not made out. He relies upon the judgment of Hon'ble Supreme Court in M/s Indus Airways Pvt. Ltd. and others vs. M/s Magnum Aviation Pvt. Ltd. and another, 2014(2) RCR (Criminal)



494. It is submitted that the impugned complaint is based on general allegations against the petitioner that he was solely responsible for running of the company. He, thus, vehemently contends that there was no *prima facie* case made out against the petitioner, but learned trial Court failed to appreciate the same and thus, in violation of the law settled, passed the impugned summoning order dated 22.04.2022. He has contended that the complaint and the subsequent summoning order being unsustainable in the eye of law, deserve to be set aside.

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 petitioner was the Director/authorized signatory of the company M/s Deneb Automotives Pvt. Ltd. The company had requested the respondent to supply the goods material to the petitioner. Resultantly the respondent supplied the material goods to the accused and an amount of Rs.24,05,468.70/- was outstanding against the company. The petitioner being the Director/authorized signatory of the company issued the account payee post dated cheque as part payment. On the presentation of the same, the cheque was dishonoured due to reason 'payment stop by drawer'. Notice was issued to the petitioner for the payment of the same, however, when the amount was not paid, the complaint was filed. In the preliminary evidence, the complainant besides tendering his affidavit, has also tendered the documents Ex.C1 to C-9. Learned trial Court having found a *prima facie* case against the petitioner, summoned him vide impugned order dated 22.04.2022. At the time of summoning, the Court is not to shift the evidence on record, however, the



material produced is to be evaluated so as to assess whether any *prima facie* case is made out or not. Having found a *prima facie* case against the petitioner, he was summoned. This Court is not obliged to examine whether the cheque in question was issued by the authorized signatory of the company or not, whether the petitioner was in fact authorized signatory of the company or not or he was authorized by the company or not, are the questions not to be gone into by the High Court rather these are dispute questions of facts which require evidence in order to prove the same.

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 uncomplained, 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



CRM-M-2187-2025

-5-

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. There is no dispute regarding the judgment relied upon by learned counsel for the petitioner, however, the same is distinguishable on the facts and circumstances of the present case.

8. Weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no infirmity in the impugned order passed by learned trial Court. Hence, the present petition being devoid of any merit, is hereby dismissed.

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

16.01.2025
sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No