



CRM-M-37689-2021 (O&M)

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

286

**CRM-M-37689-2021 (O&M)
Date of decision: 27.01.2026**

Harjeet Singh Khangora and another**...Petitioners**

Versus

Dr. Mulkh Raj and another**...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Harvinder Pal Singh Ghuman, Advocate
for the petitioners.

None for the respondents.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of Criminal Complaint bearing No. COMA/166/2018 (Annexure P-1), tiled as ***Dr. Mulkh Raj vs. Harjeet Singh and others***, filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*) as well as for quashing of order dated 01.03.2018 (Annexure P-2) whereby the petitioners had been summoned to face trial for commission of aforementioned offences.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by respondent No. 1/complainant against the petitioners and their firm M/s Guru Ram Dass Agro Industries & Implements (*for short 'firm'*) on the allegations that the petitioners, who were partners in the said firm, had insisted him to provide financial help. Respondent No.1 had given a cheque for a sum of Rs.5 Lakhs



to them in December, 2013 and cash amount of Rs.3 Lakhs in March, 2014. They had subsequently induced him to get collateral guarantee given by one farmer to them to the tune of Rs.14.50 Lakhs on the representation that on release of such guarantee, the farmer would return the aforementioned amount to them and they would return the amount of Rs. 8 Lakhs payable by them to respondent No.1. In order to discharge their liability, the petitioners issued 08 cheques to the tune of Rs. 8 Lakhs in favour of respondent No. 1. Those cheques were presented on 28.12.2017 for realization but had been dishonoured. The petitioner and other accused failed to pay the amount of cheques in question even after issuance of legal notice, thereby compelling respondent No. 1 to file the impugned complaint.

3. On considering the preliminary evidence produced by the respondent No.1/complainant, the learned trial Magistrate, vide impugned order dated 01.03.2018, summoned the petitioners to face trial for commission of offence punishable under Section 138 of the N. I. Act. The petitioners have prayed for quashing of the complaint as well as the summoning order by filing the present petition.

4. It is argued by learned counsel for the petitioners that the impugned complaint as well as the summoning order are liable to be set aside as while passing the impugned order, the learned Magistrate ignored the fact that there was no material to show that they had obtained any loan from the respondent/complainant. Respondent No. 1 had willingly and voluntarily become guarantor for their firm on 22.05.2014 and had executed documents in this regard, since he wanted to have control over the firm of the petitioners.



Another guarantee deed had been executed by him on 03.03.2016 for a sum of Rs. 70 Lakhs. The petitioners had retired from the partnership of the firm at the insistence of respondent No. 1 on 12.05.2016 and 04.02.2016, respectively and were no more partners at the time of dishonour of the cheques in question as well as filing of the complaint. It is further argued that respondent No. 1, was greedy and had compelled petitioner No. 1 for inducting partners of his choice in the firm. Some partners were inducted subsequently. As on the date of issuance and dishonour of the cheques in dispute as well as on the date of filing of the complaint, the petitioners were not the partners in the firm and as such, they could not be implicated as accused and subjected to trial. The fact that petitioner No. 2 had retired from the partnership of the firm on 04.02.2016 had even been admitted by respondent No. 1 in his cross-examination. In view of these facts, no prosecution can be launched against the petitioners. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint as well as the summoning order are liable to be set aside.

5. There is no representation on behalf of the respondents.

6. This Court has heard the submissions made by learned counsel for the petitioners, besides going through the material placed on record.

7. At the outset, it is to be considered as to whether, the prayer made by the petitioners for quashing of complaint can be considered by this Court in a petition filed under Section 482 of the Code of Criminal Procedure (*for short* 'Code'). The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under the



above mentioned Section in a case reported as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736*** which are as follows:-

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
- (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
- (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

8. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition, filed under Section 482 of the Code for quashing an order summoning the accused, is maintainable.

9. Similarly, in a recent judgment dated 22.02.2024 titled as ***Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261***, the Hon'ble Supreme Court reiterated the position that the order of issuance of



summons could be interfered with by the High Court in exercise of powers under Section 482 of the Code.

10. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 482 of the Code, however at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 482 of the Code is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

11. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent No. 1 and the impugned order are liable to be quashed or not? The main thrust of the arguments addressed by learned counsel for the petitioners is that they had already retired from the partnership of the firm prior to the issuance and dishonour of the cheques as well as the filing of the complaint and, therefore, were not partners at the relevant time so as to attract liability under Section 138 of the N.I. Act. It is specifically highlighted that respondent No.1 himself admitted in his cross-examination that petitioner No.2 had retired from the partnership of the firm on 04.02.2016, which demolishes the very foundation of the complaint against them. However, on



going through the record, this Court is of the considered opinion that the contention as raised by learned counsel for the petitioner has no substance in view of the fact that at this stage, petitioner No. 1 has neither denied his signatures on the cheques in question nor the factum of issuance thereof. So far as the admittance of respondent No. 1 in his cross-examination that petitioner No. 2 had retired from the partnership of the firm on 04.02.2016 is concerned, a perusal of the latter part of his cross-examination would show that he had categorically stated the petitioners had not retired from the firm/accused No. 3. The other arguments raised by learned counsel for the petitioners pertain to disputed questions of fact and require proper appreciation and evaluation of evidence. Such an exercise is impermissible while exercising jurisdiction under Section 482 of the Code as this Court cannot conduct a mini trial or assess the probative value of the material at this stage.

12. It is worth mentioning that the learned Magistrate, after considering the evidence produced on record and by forming opinion under Section 204 of the Code observed that there are sufficient grounds for proceeding and issued summons for procuring the attendance of the petitioners as accused. The Magistrate was not required to examine the merits and de-merits of the case as the test to be applied at this stage was as to whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. It is well settled that the Court at the stage of issuing process cannot test the veracity of allegations nor for that matter can it proceed in the manner



that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the contention as raised by the petitioner cannot be accepted.

13. The Magistrate, after applying his mind and on due consideration and appraisal of the evidence produced on record and on being *prima facie* satisfied, passed the impugned order dated 01.03.2018. In view of the discussion as made above, no error had been committed by the learned trial Magistrate as there was sufficient material on record to summon the petitioners to face trial in the aforementioned complaint. As such, no ground has been made out to quash the complaint as well as the impugned order passed there. Accordingly, finding no merit, the petition is dismissed.

[MANISHA BATRA]
JUDGE

27.01.2026
Waseem Ansari

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| 1. Whether speaking/ reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |