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

**CRM-M No.32093 of 2023
Date of Decision: 30.01.2026**

Aarti Trehan and another ... Petitioners
Versus
M/s Super Oils ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manuj Nagrath, Advocate,
for the petitioners.

Mr. Ankur Ghai, Advocate,
for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint bearing No.93195 of 2022 titled as *M/s Super Oils v. Aarti Trehan and another* as well as the order dated 18.03.2023 passed by the Court of Judicial Magistrate First Class, Ludhiana in the abovesaid complaint thereby summoning the petitioner for commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (For short "NI Act").

2. Brief facts relevant for the purpose of this petition are that the aforementioned complaint has been filed by the respondent-complainant which is a partnership firm on the allegations that the petitioner No.1 is proprietor of petitioner No.2 firm and is managing and

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controlling affairs of the firm as such being responsible for its day to day work. She had contacted the complainant who is a supplier of industrial oils and lubricants for purchase of the same. As per the terms settled between them, she was to make payment of the purchased goods promptly and was to pay interest @ 18% per annum. The petitioner No.1/her firm started making purchases from the respondent-complainant. The payments received from the petitioners was duly credited in the account of the respondent during the period from 01.09.2022 till 21.10.2022. It was alleged that on 31.08.2022 an amount of Rs.5,07,209/- was payable by the petitioners. Thereafter some payments were made which were duly reflected in the record as well as in GST returns. As on 01.11.2022, a sum of Rs.2,11,073/- was payable by the petitioners in order to discharge their legally enforceable liability. The petitioners issued two cheques for sums of Rs.1,13,245/- and Rs.96,146/- respectively in favour of the respondent. These cheques were presented for realization but were returned dishonoured with the report "Payment stopped by drawer". Legal notice was served upon the petitioners by the respondent. Despite receipt of notice, the petitioners failed to make payment of the cheque amount thereby compelling the respondent to file the aforementioned complaint.

3. After presentation of the complaint before the jurisdictional Magistrate and on adducing preliminary evidence, the learned Magistrate vide order dated 18.03.2023 observed that a prima facie case was made out for summoning the petitioners to face trial for commission of offence

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punishable under Section 138 of NI Act and issued process accordingly. Feeling aggrieved, this petition has been filed.

4. It is argued by learned counsel for the petitioners that the orders summoning them as accused as well as the complaint filed by the respondent are not sustainable in the eyes of law as while passing the impugned order, the learned trial Magistrate ignored the fact that the cheques in question were issued by the petitioners only as security cheques. The last consignment of the goods supplied by the respondent to the petitioners was found to be defective. The petitioners in term of the oral agreement had requested the respondent to settle the matter as defective material was lying with him and to reconcile the books of account but no heed had been paid by the respondent. Since the goods supplied were defective and substandard, no legally enforceable liability existed as against the petitioners and instead of replacing the goods, they had presented the security cheques as a counterblast to a civil suit which had already been filed by the petitioners against the respondent. It is further argued that in view of act and conduct of the petitioners, no legally enforceable liability was existing against the petitioners as on the date of presentation of cheque.

5. Learned counsel for the petitioners has further argued that as per the allegations in the complaint, an amount of Rs.2,11,073/- was payable by the petitioners but the cheques were for an amount of Rs.2,09,991/- which did not correspond to the liability and this showed that the allegations as levelled by the petitioners were wrong. It is also argued that the

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petitioners had given an amount of Rs.7 lakhs to the respondent from time to time and the same had been duly credited and no amount was payable. With these broad submissions, it is argued that the impugned order and the complaint as filed by the respondent are not legally sustainable. It is, therefore, urged that the complaint be quashed and the impugned order be set aside.

6. Reply has been filed by the respondent. It is argued by learned counsel for the respondent that there is no illegality in the impugned order and no ground has been made out for quashing the complaint in question. The cheques in question were issued by the petitioners to discharge their legally enforceable liability. They had stopped payment intentionally. They had not discharged their legally enforceable liability qua these cheques. The learned trial Court after considering the evidence produced on record had passed a well reasoned order. It is not open for this Court to interfere in this order while exercising powers under Section 482 of Cr.P.C. unless there was some incontrovertible evidence clearly indicating that the petitioners could not have any concern with the issuance of the cheques in question and it would be an abuse of process of the Court to ask them to stand trial. It is, therefore, urged that the petition is devoid of any merits and is liable to be dismissed.

7. This Court has heard learned counsel for the parties at considerable length and has gone through the record carefully.

8. At the outset, it is to be considered as to whether, the prayer

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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. 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.

Further, the question as to whether the order passed by the

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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 Foods Ltd. and another v. Special Judicial Magistrate and others, (1998) 5 Supreme Court Cases 749*, wherein it was observed that a petition filed under Section 482 of Cr.P.C. for quashing an order summoning the accused is maintainable.

10. In *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 Cr.P.C.

11. 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 Cr.P.C.. However at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 482 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.

12. Moreso, as per Section 204 of the Code, if in opinion of the

Magistrate taking cognizance of an offence, there are sufficient grounds for

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proceeding, he shall issue summons for procuring the attendance in summons/warrants case. The sine qua non for exercising the power under Section 204 of Cr.P.C. to issue process is the subjective satisfaction regarding the existence of sufficient ground for proceeding. At that stage, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the material collected is adequate for supporting the conviction. For issuance of summons under Section 204 of Cr.P.C., the expression used is “there is sufficient ground for proceeding” and detailed inquiry regarding merits/demerits is not required. Reference in this context can be made to ***Mahendra K.C. Vs. State of Karnataka, (2022) 2 SCC 129: (2022) 1 SCC (Cri) 401*** wherein the Hon’ble Supreme Court had observed that the test to be applied is whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. At this stage, the Court 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.

13. So far as the contentions of the petitioners that they had already paid a sum of Rs.7 lakhs to the respondent and the goods supplied by the respondent had also been found to be of some substandard quality and hence, they were not liable to pay amount of the same and as such the provisions of Section 138 of NI Act were not attracted are concerned, this Court is of the opinion that these contentions being factual one can be ascertained only at the time of trial on thorough assessment of evidence to be

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adduced by the parties and this Court while exercising power under Section 482 of Cr.P.C. cannot assume the role of the trial Court and cannot suffocate proceedings by appreciating the probable defence of the petitioner at this stage. In this context, this Court places reliance upon the observations made by the Hon'ble Supreme Court in *M/s M.M.T.C. Ltd. and another v. M/s Medchl Chemicals and Pharma P. Ltd. and another, (2002) 1 SCC 234*, wherein it was observed that there is 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 petition filed by the accused, the High Court should not have concluded it that there was no existing debt or liability. Reliance can also be placed upon *HMT Watches Limited vs. M.A. Abida, (2015) 11 SCC 776*, wherein the Hon'ble Apex Court observed that the inherent powers under Section 482 of Cr.P.C. cannot be extended to determine disputed questions of fact as it is only for the trial Court to decide the same after examining the evidence on record. As such, interference by this Court with regard to factual questions is impermissible in law. Similar observations were made by Hon'ble Supreme Court in *Rathish Babu Unnikrishnan Vs. State (Govt. of NCT), 2022 SCC Online SC 513*, wherein it was observed that the consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an

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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.

14. Reliance is further placed upon ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458***, wherein it was observed that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments made in the complaint. The defence of the accused cannot be considered at this stage. The Court considering the prayer for quashing does not adjudicate upon a disputed question of fact. Similar observations were made by Hon'ble Supreme Court in ***Rajeshbhai Muljibhai Patel v. State of Gujarat, (2020) 3 SCC 794***, wherein it was observed that when disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of NI Act ought not to be quashed by the High Court by taking recourse to Section 482 Cr.P.C.

15. On applying the principles of law as laid down in the above cited cases to the facts peculiar to this petition, it has been noticed that the petitioner No.1 neither denied her signatures on the cheques in question nor

the fact of issuance thereof. Her claim that the cheques in question were got

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issued from her by respondent No.2 as security cheques needs minute scrutiny of the evidence to be led by both the parties, which obviously cannot be done in the present petition. As per provisions of Section 139 of the NI Act, if signatures on a cheque are admitted, the presumption lies that such question was issued in order to discharge a legally enforceable liability. So far as the contention that the cheque in question was a security cheque is concerned, the well settled proposition of law is that security cheque is integral part of commercial process entered into between the accused and the complainant. Security is not a deterrent for the drawer against dishonouring his financial commitment but it can also be legally and validly utilized towards the discharging of liability of the drawer. Reference in this regard can be had to the observations made in *Shalini Enterprise and another vs. Indiabulls Financial Services Ltd., 2013 (2) CCC 835*, wherein **this Court had** observed that a security cheque is an acknowledgement of liability on the part of the drawer that the cheque holder may use the security cheque as an alternative mode of discharging his/its liability. The argument that on dishonouring of such cheque, no offence under Section 138 of NI Act was made out, was rejected. In view of this position of law, the argument that cheque in question was a security cheque and hence, should not be utilized by the petitioners for discharging liability of the complainant has no force. More so, it is revealed that the learned Magistrate passed the impugned order after considering the preliminary evidence produced on record. It is discernible that the view taken by the Magistrate is possible view that the

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cheques in question were drawn in discharge of a legally enforceable debt. As such in the presence of such legal presumption, it is not judicious to quash the order passed by learned trial Magistrate. The balance of convenience is in favour of the complainant. Though obviously, the petitioners would certainly be given liberty to rebut that presumption. Consequent to the discussion as made above, this Court has no hesitation to hold that the order passed by the learned Magistrate does not warrant any interference at this stage when the factual controversy between the parties is yet to be canvassed and considered by the trial Court nor any ground for quashing of the complaint is made out. Accordingly, finding no reason to allow the petition, the same is ordered to be dismissed.

16. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

30.01.2026
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes