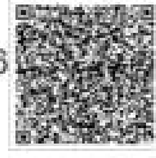


IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CRM-M-36358-2024 (O&M)
Reserved on: 8th July, 2025
Pronounced on: 19th August, 2025

Mohaninder Singh
...Petitioner
Versus

M/s Singh Importers
...Respondent

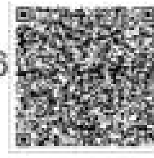
CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ankush Verma, Advocate for the petitioner.
Mr. Chander Shekhar, Advocate for the respondent.
***

MANISHA BATRA, J :-

The instant petition has been filed by the petitioner seeking quashing of order dated 18.07.2022 passed by the Court of Judicial Magistrate Ist Class, Kurukshetra in criminal complaint bearing NACT No. 665 of 2020 titled as '*M/s Singh importers through its proprietor Vs. Mohaninder Singh'* whereby the petitioner has been summoned to face trial for commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, '*NI Act'*).

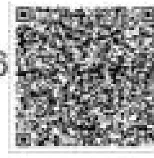
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent-complainant through its proprietor Mr. Gurfateh Singh, on the allegations that the present petitioner had agreed to supply scrap of HMS-1 quality to the respondent in the year 2019. A sum of Rs. 2,54,57,211/- was agreed to be paid by the respondent which was so paid. The firm of the petitioner supplied inferior quality of scrap to the respondent, which was having value of only Rs. 1,50,80,410/-. On convening panchayats, the



petitioner admitted his liabilities towards the respondent and assured to return an amount of Rs. 1,03,76,801/-. He then issued a cheque dated 08.01.2020 for a sum of Rs. 95,50,000/- from the account of his firm and also assured to pay the remaining amount of Rs. 9,50,000/- at the earliest and the said amount of money was given after great efforts. However, the cheque of Rs. 95,50,000/- when presented for realization was dishonored with the remarks 'funds insufficient'. The respondent was constrained to issue legal notice upon the petitioner, but in vain, thereby compelling it to file the aforementioned complaint.

3. After presentation of the complaint, the respondent produced preliminary evidence and vide order dated 18.07.2022, the present petitioner was ordered to be summoned to face trial for commission of offence punishable under Section 138 of NI Act.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law. In fact various business transactions had taken place between his firm and the respondent. During the pendency of the complaint also, he has paid a sum of Rs. 59,65,000/- and has supplied material worth Rs. 11,80,000/- to the respondent. He has also spent an amount of more than Rs. 35,00,000/- for shipping, loading, unloading etc.. While passing the impugned order, this fact had not been considered. It is also argued that the amount of Rs. 95,50,000/- was never payable to the respondent and proprietor of the respondent itself had inserted this amount in the cheque in question after illegally retaining the same on oral undertaking that he would return the same in near future. This cheque was only a security cheque. The petitioner is resident of SAS Nagar (Mohali) Punjab and has been summoned in violation of the provisions of

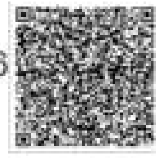


Section 202 of the Code of Criminal Procedure. The process has been misused by the respondent. No legally enforceable liabilities are subsisting against the petitioner and rather the respondent has to pay a sum of Rs. 12,00,000/- to the petitioner. The alleged amount of Rs. 1,03,76,801/- does not match with the amount of the cheque in question and hence, shows that the amount of cheque was not payable. It is, therefore, argued that the petition deserves to be allowed and the impugned order is liable to be set aside.

5. Learned counsel for the respondent has argued that there is no illegality or infirmity in the impugned order. The petitioner had issued a cheque for sum of Rs. 95,50,000/- to discharge his legally enforceable debt. The learned trial Court, after considering the evidence produced on the court, 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 petitioner could not have any concern with the issuance of cheque in question and it would be an abuse of process of the Court to ask him to stand trial. It is, therefore, urged that the petition is devoid of any merits and it is stressed that the same is liable to be dismissed.

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

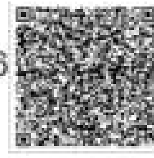
7. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 482 of the Code of Criminal Procedure. The Hon'ble Supreme Court has laid down certain conditions whereby the complaint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

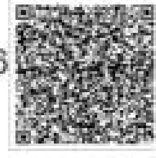
8. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC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

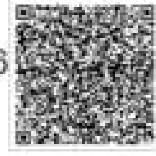
10. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 482 of Cr.P.C., however at the same time, it is also to be kept in mind that the inherent jurisdiction 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.

11. So far as the arguments as raised by learned counsel for the petitioner to the effect that the mandatory provisions of Section 202 of the Code had not been complied with is concerned, it may be stated that so far as this provision is concerned, it envisages the postponement of issuance of process where the accused resides beyond the jurisdiction of the territory of the Court. Undisputedly, the petitioner being a resident of Shimla was residing outside the territory jurisdiction of the trial Magistrate. However, the submission that for want of conducting any inquiry under this provision, complaint is liable to be quashed, cannot be accepted in view of the observations made by Hon'ble Supreme Court in Re: Expeditious Trial of



Cases under Section 138 of NI Act 1881, (2021) 16 SCC, wherein while considering the necessity of conducting an inquiry, it was observed that for this purpose, the Magistrate can examine the witnesses on affidavit and only in exceptional cases, he should examine the witnesses orally. The Hon'ble Supreme Court held that if the Magistrate holds the inquiry himself, he need not examine the witnesses and in suitable cases, he can examine the documents to satisfy himself about the sufficiency of grounds for proceedings under Section 202 of Cr.P.C. The relevant observations made by Hon'ble Supreme Court in this context are reproduced as under:-

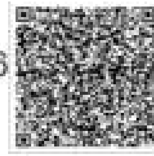
> *10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry to decide whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-6-2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before the issuance of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See :* ***Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479****,* ***Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192*** *and* ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828****) There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction*



of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

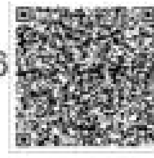
11. The learned Amicus Curiae referred to a judgment of this Court in K.S. Joseph v. Philips Carbon Black Ltd., (2016) 11 SCC 105 : (2016) 4 SCC (Civ) 616 : (2017) 1 SCC (Cri) 270 where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479, Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192 and Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828, the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amicus Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amicus Curiae.

12. Another point that has been brought to our notice relates to the interpretation of Section 202(2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202(1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145(2) of the Act enables the court to summon and



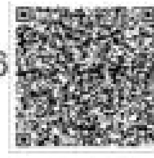
examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202(2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of the examination of the complainant by way of an affidavit. There is no specific provision in relation to the examination of the witnesses also on the affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202(2) of the Code is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on the affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202."

12. In view of the above-discussed binding precedent of Hon'ble Supreme Court, this Court is of the opinion that Section 202 of the Code is inapplicable to the complaint under Section 138 of NI Act. More so, the



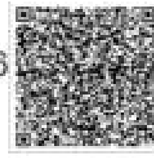
complaint is totally based upon documentary evidence. No benefit whatsoever would be achieved by sending the matter to the police for investigation, particularly when the Magistrate could inquire the same. As such, no illegality can be stated to have been committed by the learned Trial Court in this regard.

13. Further so far as the contention raised by the petitioner that no legally enforceable liability has been sustained against him since he had paid an amount of Rs. 59,65,000/- to the respondent and material worth Rs. 11,80,000/- had also been supplied to it and therefore, the amount as payable to respondent was much lessor than the amount as shown in the cheque and as such, the provisions of Section 138 of NI Act were not attracted, is concerned, this Court is of the opinion that as to whether, there was part payment of the aforementioned amount and relevance thereof is concerned, the same will be ascertained at the time of trial on thorough assessment of the evidence adduced by the parties and this Court cannot assume the role of the trial Court and by taking advantage of Section 482 of Cr.P.C., 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.M.T.C. Ltd. and another v. 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 the averments in the petition filed by the accused, the High Court should not have concluded it that there was no existing debt or



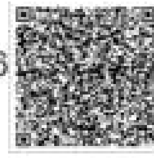
liability. Reliance can further be placed upon the observations made by the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776,*** wherein it was observed that the inherent powers under Section 482 of Cr.P.C. cannot be extended to determine disputed questions of facts as 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 the factual question is impermissible in law. This Court further places reliance upon the observations 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 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 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 peculiar facts of the present case, it has been noticed that that after considering the evidence available on record in the form of preliminary evidence as adduced by the respondent No.2-complainant, the learned Magistrate passed the impugned order and it is discernible that the view taken by the Magistrate is possible view that cheque in question was 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 the learned Magistrate by going into the details of the allegations as levelled by the petitioner-accused or by carrying some detailed enquiry without giving opportunity to the trial Court to evaluate the evidence of the parties firstly as has been held in Rathish Babu Unnikrishnan's case (Supra). Undoubtedly, this Court has ample powers to quash a criminal proceeding at any stage. However, such powers are to be exercised with great circumspection and sparingly and also in rarest of rare cases. It is not expected to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations levelled in the complaint by invoking the extraordinary/inherent powers of this Court and that too at the pre trial stage since quashing of proceedings at this stage would obviously result in final adjudication of dispute between the parties without giving them opportunity to adduce evidence. More



particularly, when there is a legal presumption that a cheque is issued and the signatures over the same are not disputed by the accused. The balance of convenience is in favour of the complainant though obviously, the accused would certainly be given opportunity to rebut that presumption. Consequent to the discussion as made above, I have no hesitation to hold that the summoning 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. Accordingly, finding no reason to allow the petition, the same is 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.

17. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

19th August, 2025
Parveen Sharma

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