IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
CRM-M-1688-2019
Pronounced on: 19th August, 2025

Tridweep Singh Malhan

...Petitioner

Versus

Bharat Bhushan

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sameer Sachdeva, Advocate and
Ms. Lishika Mehta, Advocate for the petitioner.

Mr. Jitender Sehrawat, Advocate for the respondent.

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MANISHA BATRA, J :-

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of complaint No. 2361 of 2018 titled as '*Bharat Bhushan vs. Tridweep Singh Malhan'* pending before the learned Judicial Magistrate Ist Class, Bhiwani, as well as the order dated 06.08.2018 passed by the learned Magistrate thereby summoning the petitioner 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 respondent-complainant filed the aforementioned complaint, on the allegations that he was having friendly relations with the petitioner. The petitioner borrowed a sum of Rs. 30,00,000/- from him on 28.01.2018 for his personal use with promise to return the same shortly. As a security for repayment of the borrowed amount, the petitioner had issued

three cheques of Rs. 10,00,000/- each. He also executed a receipt and promissory note in favour of the respondent. The petitioner failed to repay the amount so borrowed. The cheques in question were presented for realization and were dishonored. The respondent-complainant served legal notice upon the petitioner calling upon him to pay the amount, but in vain, thereby compelling the respondent to file the aforementioned complaint.

3. The respondent produced preliminary evidence and vide order dated 06.08.2018, the petitioner has been ordered to be summoned as an accused.

4. It is argued by learned counsel for the petitioner that the impugned complaint as well as order summoning him as an accused, are not sustainable in the eyes of law, as he was a director of M/s Quantech Info. Technologies Pvt. Ltd. In December, 2015, one of the director namely Puran Singh had resigned from the above named company. He was taken on the board of directors with the condition that he will make basic investment in the company. One Sidharath Vashisht had also joined as director. The respondent-complainant had deposited an amount of Rs. 14,00,000/- as his share of investment in the company, however, Sidharath Vashisht did not deposit any amount and resigned from the company in April, 2016. The respondent-complainant had proposed to invest an amount of Rs. 60,00,000/- in the company, subject to condition of receipt of advance bank cheques amounting to Rs. 30,00,000/- as security. The petitioner had agreed to the conditional proposals and the cheques in question were issued. The respondent-complainant failed to contribute his agreed share of investment. Subsequently, on asking of the petitioner to give back his cheques, he

represented that those cheques had been lost but the same were subsequently used for the purpose of filing complaint against the petitioner. The petitioner had served a legal notice upon the respondent for withdrawing the complaint filed by him by misusing the lost cheques but he did not pay any heed. There was no legally enforceable liability against the petitioner to pay the amount of the cheques in question to the respondent. These cheques were undated security cheques and did not create any legal liability.

5. It is, further argued that the summoning order has been passed by the learned trial Court without complying with the legal requirement under Section 202 of Cr.P.C. and hence, the complaint is liable to be quashed on that very ground. While submitting that the proceedings initiated against the petitioner by filing of this complaint would amount to abuse of process of the court it is urged that the impugned complaint, summoning order and consequential proceedings arising therefrom are liable to be quashed.

6. Reply has been filed by respondent-complainant. It is submitted by learned counsel for the respondent that no cause of action has accrued in favour of the petitioner to file this complaint. As per Section 142 of the NI Act, the complaint under Section 138 of NI Act is to be inquired into and tried only by the Court within whose local jurisdictional, the cheque is delivered for collection and as such, the jurisdiction of the respondent to file the complaint is not suffering from any bar or infirmity. The cheques in question were issued by the petitioner in his personal capacity in lieu of loan of Rs. 30,00,000/- borrowed from the respondent and therefore, the petitioner had a legally enforceable liability to repay the amount of these

cheques, which he has failed to discharge. The trial is at the fag end as even statement of the accused under Section 313 of Cr.P.C. has been recorded and defence evidence is to be led. The petition under Section 482 of Cr.P.C. is not maintainable as a revision is maintainable to challenge the summoning order. It is, therefore, argued that the petition does not deserve to be allowed.

7. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

8. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint and summoning order 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;
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> (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.

9. 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.

10. 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.

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. It is now to be seen as to whether, the complaint as lodged by the respondent against the petitioner and the order thereby summoning the petitioner as an accused are liable to be quashed or not? As per Section 204 of the Cr.P.C., if in opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for 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. v. 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. As such, the

first contention of the petitioner can not be accepted. The allegations against the petitioner are that he had issued a cheque for a sum of Rs. 30,00,000/- to discharge his legally enforceable liability of payment of a sum of Rs. 30,00,000/- to the respondent and the said cheque has been dishonored. The petitioner has not denied his signatures on the cheque in question nor the fact that the same had been issued by him. As per the scheme of the Negotiable Instruments Act, once an accused admits signatures on the cheque in question, certain presumptions are to be drawn, which result in shifting the onus. Section 118(a) of NI Act lays down a presumption that every negotiable instrument is drawn or made for consideration. Another presumption is enumerated in Section 139 of the Act, as per which, the holder of the cheque received it for the discharge, in whole or in part, of any debt or other liability. A combined effect of these provisions is a presumption that the cheque was drawn for consideration and given by the accused for discharge of debt or liability. It is well settled that the presumptions raised under Sections 118(a) and 139 of NI Act are rebuttable presumptions and a reverse onus is cast on the accused, who has to establish a probable defence on the standard of preponderance of probabilities to prove that either there was no legally enforceable debt or other liability.

13. Simultaneously, the question as to whether, the summons issued by the trial Court can be ordered to be quashed on the basis of factual defences taken by an accused at that stage by filing a petition for quashing of order has also to be considered. In ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, it was observed by Hon'ble Apex Court that the burden of proving that there is no existing debt or liability is

to be discharged in the trial, as there is a legal presumption of a cheque having been issued in discharge of liability and such presumption must receive due weightage. In view of this discussion, this Court is inclined to hold that since the burden of proving that there is no existing debt or liability is on the petitioner and he has to discharge it in the trial, as such, at this stage, merely on the basis of averments in the petition filed by him, this Court should not conclude that there was no existing debt or liability. In support of this view, this Court finds support from the observations made by 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.***

14. Further so far as the plea taken by the petitioner to the effect that the cheque in question being a security cheque, the same could not have been considered to have issued for discharge of legally enforceable debt and the complaint is not maintainable, is concerned, in the opinion of this court, the same could not be accepted. Since the well-settled proposition of law is that a cheque issued as security would also come under the provisions of Section 138 of the NI Act. In this context, this court draws reliance upon ***Shalini Enterprises vs. India Bulls Financial Service : 2013 (2) CCC 835,*** wherein it was observed by Hon'ble Supreme Court that a security cheque is an integral part of commercial process entered into between the accused and the complainant. Security cheque is not only a deterrent for the drawer against dishonouring his financial commitment but it can also be legally and validly utilized towards the discharging of the liability of the drawer. A security cheque is an acknowledgment of liability on the part of the drawer that the cheque holder may use the security cheque as an alternate mode of

discharging his/its liability. Reliance is further placed upon ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, wherein a security cheque had been presented for realization after the period agreed for repayment of loan and when the loan advanced had already fallen due for repayment. It was held by Hon'ble Supreme Court that a cheque if issued as a security to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It was observed that if it is given, deposited or pledged to make certain the fulfillment of an obligation to which the parties to the transaction are bound, such cheque matures for presentation and its drawee is entitled to present the same. On its presentation, if the same is dishonoured, the consequences contemplated under Section 138 of the Act and the other provisions of Act would follow. (also see ***Dawn Ayanger vs. State of Assam and another, 2016 (3) SCC 1***).

15. In view of the discussion as made above, there is no hesitation in holding that since the stand taken by the petitioner himself is that the cheque in question was issued as a security cheque, therefore, the same would certainaly fall under the provisions of Section 138 NI Act, hence it cannot be stated that no offence under this Section has been made out on account of dishonour of cheque, only because it was a security cheque.

16. The petitioner has also taken a plea that the provisions of Section 202 of Cr.P.C. were mandatory in nature and have not been complied with by the respondent and hence the complaint is not

maintainable. So far as, Section 202 of Cr.P.C. 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 resident of Gurugram was residing outside the territorial jurisdiction of the trial Magistrate at Bhiwani. 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 proceeding 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."***

17. In view of the abovesaid discussed binding precedent of Hon'ble Supreme Court, this Court is of the opinion that Section 202 of the Code is inapplicable to complaint under Section 138 of NI Act. In the instant case, the learned Magistrate passed the impugned order after going through the cheque, notice, preliminary evidence in the form of sworn deposition of the respondent-complainant and documents relied upon by him, on being satisfied that there existed sufficient grounds to proceed against the accused under the aforementioned section and passed an order to summon him. Therefore, no infirmity can be found in the order so passed. It may also be mentioned that the petitioner is seeking quashing of the complaint as well as summoning order by raising disputed questions of facts. It is also well settled that when disputed questions of facts are involved which need to be executed after the parties adduced evidence, complaint under Section 138 of NI Act ought not to be quashed by the High Court by taking re-course of Section 482 of Cr.P.C.. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in ***Rajeshbhai Muljibhai Patel v. State of Gujarat, (2020) 3 SCC 794*** and ***Sampelly Satyanarayana***

Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458.

18. 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 after considering the evidence available on record in the form of preliminary evidence as adduced by the respondent-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. 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.

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

20. 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