



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

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**CRM-M-15405-2024 (O&M)
Date of decision: 29.04.2025**

Gurjeet Singh Sethi**...Petitioner****Versus****M/s Intec Capital Limited****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Aman Priye Jain, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of complaint bearing NACT No. 29481 of 2018 titled as '*M/s Intec Capital Limited vs. Gurjeet Singh Sethi*', filed under Section 138 of Negotiable Instruments Act, 1881 (*for short 'NI Act'*) which is pending before the Court of Judicial Magistrate First Class, Gurugram and the order dated 13.10.2019 (Annexure P-2) whereby the present petitioner had been ordered to be summoned as an accused and had been called upon to appear and to face trial for commission of aforementioned offence.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned complaint has been filed by the respondent, who is non-banking finance company, on the allegations that one Surjeet Singh Sethi had approached it for grant of loan and had accepted documents in lieu thereof. Loan facility was provided to him. The present petitioner had stood guarantor for him. In order to discharge a part of his



liability towards the total outstanding amount, the petitioner issued a cheque for a sum of Rs. 26,82,665/- in favour of the respondent. The said cheque had been dishonoured on presentation. Statutory notice was issued against the petitioner. He failed to pay the amount of cheque in question, thereby compelling the respondent to file the aforementioned complaint.

3. On considering the preliminary evidence produced by the respondent, the learned trial Magistrate, vide impugned order dated 13.10.2019, summoned the petitioner to face trial for commission of offence punishable under Section 138 of the N. I. Act. The petitioner has 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 petitioner 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 he had not obtained any loan from the respondent. He had given the cheque in question as a security for repayment of the loan taken by the principal borrower. Necessary steps for recovery of the loan amount have already been taken by the respondent as against the principal borrower and in that circumstance, the respondent could not proceed against the petitioner. 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. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.



6. 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.

7. 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.

8. 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.

9. 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.

10. 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 and the impugned order are liable to be quashed or not? The main thrust of the arguments address by learned counsel for the petitioner is that the cheque in question was issued by him as a security cheque being in



capacity of guarantor of the principal borrower Surjeet Singh Sethi and he had no legally enforceable liability towards the respondent and as such the complaint could not be filed against him. 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, he has neither denied his signatures on the cheque in question nor the factum of issuance thereof. His claim is that the loan facility had been availed from the respondent by the principal borrower and he had only stood guarantor for the same. It is not his claim that as on the date of issuance of cheque in question, the liability to make payment of the amount as mentioned therein did not subsist. It is well settled proposition of law that if on the date of issuance of cheque, liability of debt exists or the amount mentioned therein has become legally recoverable, Section 138 of the N. I. Act is attracted since issuance of cheque itself represents the outstanding liability. Reliance in this context can be placed upon the authority cited as ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, wherein the cheque in question was issued as security. The loan amount had matured and it had fallen due. It was observed 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 fulfilment 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 N. I. Act and the other provisions of N.I. Act would follow. Hon'ble Supreme Court had also observed that when a cheque is issued even though as 'security', the consequences flowing therefrom are also known to the drawer of the cheque and if such cheque is presented and dishonoured, the holder of the cheque would have the option of initiating the civil proceedings for recovery or the criminal proceedings.

11. Since in this case, the claim of the petitioner himself is that the cheque in question was issued by way of security, therefore, the contention that it should be held as security even after the amount had become due and payable cannot be considered to be sustainable. The security cheque is integral part of commercial process entered into between the accused and the complainant. It is not only a deterrent for the drawer against dishonouring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the drawer, as observed by Hon'ble Supreme Court in *Shalini Enterprises vs. Inida Bulls Financial Service : 2013 (2) CCC 835*.

12. It is worth mentioning that the learned Magistrate, after considering the evidence produced on record and by forming opinion under Section 227 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*which is pari materia with Section 204 of Cr.P.C.*) observed that there are sufficient grounds for proceeding and issued summons for procuring the attendance of



the petitioner as an 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 is 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 13.10.2019. 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 petitioner 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

29.04.2025

Waseem Ansari

1. *Whether speaking/ reasoned* : *Yes*
2. *Whether reportable* : *Yes*