2025:PHHC:023596

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M No.14965 of 2023 (O&M)
Date of decision: 18.02.2025

Mohan Medical Store and another

....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Wadhwan, Advocate
and Mr. Gurjot Singh, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Narender Singh, Advocate
for respondents No.2 and 3.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of criminal complaint bearing No.NACT/299/2019, dated 05.03.2019, titled as “M/s. Legen Health Care and another vs M/s. Mohan Medical Store and another”, filed under Section 138 of the Negotiable Instruments Act, 1881 (in short ‘the NI Act’) pending before the learned Judicial Magistrate Ist Class, Panchkula, along with all other consequential proceedings arising therefrom including the summoning order dated 04.04.2019 (Annexure P-3), vide which the petitioners have been summoned to face trial under Section 138 of the NI Act and further to set-aside the order dated 27.02.2023 (Annexure P-4), passed by the

learned trial Court, whereby non-bailable warrants have been issued against the present petitioners.

2. The brief facts of the case are that the respondents filed a criminal complaint against the petitioners under Section 138 of the NI Act, by leveling the allegations that the petitioners purchased medicines from the complainant and issued a cheque No.881951 dated 16.12.2018 for Rs.3,42,816/- to settle part of their liability. However, when the complainant presented the said cheque, it was dishonored due to the account being closed, as stated in the memo dated 11.02.2019. Thereafter, a legal notice was sent to the petitioners and the impugned complaint bearing No. NACT/299/2019, was filed before the learned trial Court and after recording the preliminary evidence, the learned trial Court passed the summoning order on 04.04.2019 (Annexure P-3), directing the petitioners and other co-accused to face trial and on failing to appear before the learned trial Court, non-bailable warrants were issued against them on 27.02.2023 (Annexure P-4).

3. Learned counsel for the petitioners inter alia contends that the petitioners never had a dealing with respondents No.2 and 3 and petitioner No.2 was in USA and getting treatment of Cancer from May, 2018 to August, 2018 and during this period, her cheque was stolen by one Santosh Khare, regarding which one FIR No.573 dated 02.10.2018, under Sections 381 and 420 IPC has been registered at Police Station Kotwali, District Jhansi (Annexure P-6) and the complaint (supra) was instituted by misusing the stolen cheque, in connivance with Santosh

Khare, who was named as an accused in the FIR (supra) and the petitioners had already closed the account and thereafter, the complaint under Section 138 of the NI Act has been instituted. He further refers to the order dated 03.8.2021 (Annexure P-9), passed by Allahabad High Court in another quashing petition preferred by the petitioners.

4. Learned counsel for respondents No.2 and 3 submits that a perusal of the FIR (supra) clearly indicates that the cheque, in question was not mentioned in the FIR and further the probable defence of the petitioners cannot be looked into by this Court while exercising powers under Section 482 Cr.P.C. and all the contentions raised by the petitioners are matter of trial and can only be adjudicated by learned trial Court, on the basis of the evidence adduced by the parties.

5. Learned State counsel submits that the instant petition has been instituted out of a private complaint between the parties and the State is not a necessary party.

6. Having heard learned counsel for the parties, this Court cannot examine the probable defence of the petitioners set up in the present petition and scuttle the proceedings before the learned trial Court even before the respondents have led any evidence. The disputed questions of fact and probable defence would be seen by the learned trial Court.

7. It is settled law that disputed questions of fact can only be adjudicated after the parties have duly adduced their evidence. The High Court, in exercise of its inherent powers under Section 482 Cr.P.C is

obliged to make a just and equitable choice and cannot go beyond its ambit to evaluate the truthfulness of the allegations or the veracity of the defence, however, convincing it might seem. Any such attempt would be impermissible in law as it would amount to giving finality to the accusations even before the prosecution is allowed to adduce evidence to substantiate the same.

8. A two Judge Bench of the Hon'ble Supreme Court recently examined this issue in ***"Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another",*** **2022 SCC Online SC 513** and speaking through Justice Hrishikesh Roy, made the following observations: -

> "*17. The consequences of scuttling the criminal process at a pre-trial stage cane 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."*

9. A two Judge Bench of the Hon'ble Supreme Court in ***"HMT Watches Ltd vs. M.A. Abida",*** **(2015) 11 SCC 776** has held as under: -

> "*10…….. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties."*

10. In ***"Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited",*** **(2016) 10 SCC 458**, decided by the Hon'ble Supreme Court, following observations were made: -

> "*17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments 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."*

11. Further in ***"Eicher Tractor Ltd. and others vs Harihar Singh and another",*** **2008(16) SCC 763**, the Hon'ble Apex Court has held that:-

> *"7. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under section 482 of the Code, the High Court would not*

ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short circuit a prosecution and bring about its sudden death. The scope of exercise of power under section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335.*** *A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows (SCC pp. 378-79, para 102):*

> *"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section*

156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. As noted above, the powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under section 482 of the Code. It is not, however, necessary that there should be meticulous

> *analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings."*

12. In view of the above discussion, this Court cannot examine the probable defence of the petitioners set up in the present petition and scuttle the proceedings before the learned trial Court even before the respondents had led any evidence. The disputed questions of fact and the probable defence of the petitioners can only be seen by the learned trial Court on the basis of evidence adduced by the parties.

13. The present petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

18.02.2025
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No