CNR No: PHHC010735352022
2026:PHHC:118393

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-30215-2022 (O&M)

MANINDER SINGH ... **Petitioner**

Versus

DAVINDER SINGH ...**Respondent**

1	The date when the judgment is reserved	24.08.2026
2	The date when the judgment is pronounced	25.08.2026
3	The date when the judgment is uploaded on the website	25.08.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment and reasons thereof.	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rakesh Sobti, Advocate and
Mr. Jaskirat Singh, Advocate for the petitioner

Mr. G.S. Majithia, Advocate for the respondent

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MANISHA BATRA, J.

1. The instant petition has been filed under Section 482 of the Code of Crime Procedure (for short "**Cr.P.C.**") seeking quashing of criminal complaint bearing No.1172 of 2020 titled as *Davinder Singh Vs. Maninder Singh* as well as the order dated 14.09.2021 passed by the Court of Judicial Magistrate First Class, Amritsar in the above said complaint thereby summoning the petitioner for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "**NI Act**").

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2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned complaint was filed by the respondent-complainant against the petitioner on the allegations that the petitioner had purchased gold articles worth Rs.20,00,000/- from the respondent-complainant against a valid invoice. To discharge his legally enforceable liability, he had issued a post-dated cheque for the aforementioned amount in favour of the respondent. The said cheque, when presented, had been dishonoured with the remarks "Payment stopped by drawer". The respondent had issued a legal notice to the petitioner, but no reply to the same had been given, thereby compelling the respondent to file the aforementioned complaint under Section 138 of the Negotiable Instruments Act. It was also alleged that the petitioner and his wife had sold a property measuring 300 square yards in favour of the wife of the respondent-complainant, and the entire sale consideration amount had been received by the petitioner through cheques. After filing of the complaint, the learned jurisdictional Magistrate recorded preliminary evidence of the complainant, in which the respondent-complainant examined himself as CW-1 and relied upon certain documents. Vide order dated 14.09.2021, the petitioner was summoned to face trial for commission of offence punishable under Section 138 of the Negotiable Instruments Act.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. In fact, he is engaged in the business of manufacturing and sale of gold articles. He had mortgaged his property in favour of the respondent and his wife in lieu of borrowing some money, with the assurance that his property will be redeemed whenever the amount of

money so lent by the respondent would be paid by the petitioner. A mortgage deed was prepared. The respondent-complainant and his wife had induced the petitioner to sign some more documents. He was even given cheques of Rs. 5,75,000/- on execution of those documents. The respondent and his wife had taken one blank signed cheque by way of security and two stamp papers from him. The same cheque had been utilized by the respondent in the complaint filed by him. He had subsequently come to know that the respondent and his wife had converted the documents on which his signatures were procured, into a sale deed of his property. A fraud has been played upon him. He has filed a civil suit for declaration against the respondent, which is pending. The cheque in question was never given by him for the purpose of discharging any legally enforceable liability. Material and true facts have been suppressed. The complaint has been filed against him to misuse the process of law. It is, therefore, argued that the complaint as well as the impugned order are not sustainable in the eyes of law and are liable to be set aside, and that the petition deserves to be accepted.

4. *Per contra*, learned counsel for the respondent has argued that there is no illegality in the impugned order and no ground has been made out for quashing the complaint. The cheque in question was issued by the petitioner to discharge his legally enforceable liability. He had stopped payment intentionally. The learned trial Court after considering the evidence produced on record has 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 the 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 is liable to be dismissed.

5. This Court has heard the rival submissions made by learned counsel for the parties at considerable length.

6. At the outset, it is to be seen 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

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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 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.

7. 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.

8. 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.

9. Moreso, as per Section 204 of the Code, 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. 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.

10. So far as the contentions of the petitioner that the cheque in question was handed over as a blank signed security cheque in a

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mortgage/loan transaction, that the respondent fraudulently executed a sale deed, and that the present complaint has been instituted as a counter-blast during the pendency of a prior civil suit filed by the petitioner 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 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 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.

11. 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.

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12. 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 neither denied his signature on the cheque in question nor the fact of issuance thereof. His claim that the cheques in question was got issued from him by respondent No.2 as security cheque 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 has no force at this preliminary stage. 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 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 petitioner 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.

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

14. Since the main petition has been disposed of, pending application, if any, is rendered infructuous.

(MANISHA BATRA)
JUDGE

25.08.2026 **Whether speaking/reasoned:- Yes/No**
Amit Sharma **Whether reportable:- Yes/No**