

*Before Mahesh Grover, J.*

KULBIR SINGH UBEROI AND ANOTHER,—*Petitioners*

*versus*

M/S KUMAR INDUSTRIES,—*Respondent*

**CRIMINAL MISC. NO. 54188/M OF 2006**

7th February, 2007

***Negotiable Instruments Act, 1881—S. 138—Dishonour of cheque—Trial Court after preliminary evidence recording prima facie case of summoning petitioners is made out—Dispute regarding issuance of another subsequent cheque—Whether complaint & summoning order liable to be quashed—Held, no—Once a complaint discloses commission of an offence the veracity of allegations is not to be tested in proceedings u/s 482 Cr.P.C.—At the stage of summoning Court is not required to meet defence of accused—In proceedings u/s 482 High Court is also not to go into truthfulness of allegations—Petition dismissed—Petitioners ready to deposit the cheque amount—Personal appearance of petitioners before trial Court exempted subject to compliance of certain conditions imposed.***

*Held*, that in proceedings under section 482 of the Code, this Court is not to go into the truthfulness of the allegations. Once a complaint discloses the commission of an offence, the veracity of the allegations is not to be tested in proceedings under Section 482 of the Code as the same had to be tested in the backdrop of the evidence which is yet to come on record.

(Para 7)

*Further held*, that in a complaint under Section 138 of the Negotiable Instruments Act if the Magistrate on perusal of the complaint and on the strength of the preliminary evidence *prima facie* finds that the allegations made therein come within the ambit of the provisions of law indicating the commission of the offence, then the necessary process has to be issued. The Magistrate is not to give detailed reasons while setting into motion the

process of law for summoning the accused persons. Satisfaction of the ingredients of the commission of the offence having been made out from the perusal of the complaint is the sole criteria for setting into motion the process of law.

(Para 10)

*Further held*, that the trial Court after perusing the complaint and the statement of the attorney of the complaint as also the affidavit had come to the conclusion that the summoning of the petitioners was desirable. Satisfaction of the Magistrate that a *prima facie* case is made out has been recorded. At the stage of summoning, the Court was not required to meet the defence of the accused and for the similar reason this Court is precluded from entering into the arena wherein the veracity of the allegations made in the complaint are to be commented upon.

(Para 11)

Aashish Chopra, Advocate, *for the petitioners*.

R.K. Chhibber, Sr. Advocate with Simaranjit Singh Chahal,  
Advocate, *for the respondent*.

## JUDGMENT

### **MAHESH GROVER, J.**

(1) The petitioners have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (in short 'the Code') and have prayed for quashing of the complaint dated 25th October, 2005 (Annexure P-1) under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and the consequent summoning order dated 25th October, 2005 (Annexure P-5) passed by the learned Addl. Chief Judicial Magistrate, Sonapat.

(2) A complaint was preferred against the present petitioners by the respondent under Section 138 of the Act. The allegations made therein were that a cheque had been issued by the petitioners bearing No. 046173 dated 3rd March, 2005 for a sum of Rs. 2 lakh drawn on the State Bank of Bikaner and Jaipur, Faridabad. On presentation the cheque is said to have been dishonoured. After the preliminary evidence was adduced by the

respondent by way of an affidavit and a statement of Ashish Gupta, his attorney, the court of Addl. Chief Judicial Magistrate, Sonapat summoned the petitioners,—*vide* order dated 25th October, 2005 (Annexure P-5)

(3) While seeking quashing of the complaint and the summoning order aforesaid, it was contended by the learned counsel for the petitioners that the complaint was malicious as on the issuance of a legal notice dated 20th September, 2005 the petitioners had submitted a reply dated 29th September, 2005 which is on record as Annexure P-3. It had been submitted by them in this reply that cheque No. 046173 dated 3rd March, 2005 of an amount of Rs. 2 lakh had been presented by the respondent-complainant in March, 2005 and the same was dishonoured, but immediately on receiving the information the petitioners had issued another cheque bearing No. 00046441, dated 23rd March, 2005 in lieu of the earlier cheque for a like amount drawn on the same bank. The petitioners had also informed the respondent through telephonic talk and had asked for the return of the earlier cheque which had been dishonoured. Instead of returning the cheque the respondent had resorted to the filing of the complaint which was an abuse of the process of law because the amount had already stood paid and the accounts had been settled. The alleged statement of accounts of the complainant was also filed along with this petition as Annexure P-4/A. The summoning order was also assailed on the ground that the same cryptic and had not given any reasons while issuing the process against the petitioners especially in view of the fact that the reply to the notice given by the petitioners on 29th September, 2005 was a part of the record before the trial court. So, in view of this it was incumbent upon the Court of Addl. chief Judicial Magistrate to have met the case of the petitioners. Reliance was placed on **Pepsi Foods Ltd. & another versus Special Judicial Magistrate & others (1)**.

(4) The present petition was resisted by the learned counsel for the respondent who stated that there were numerous business transactions between the petitioners and the complainant. The factum of the accounts having been settled and another cheque having been issued in lieu of the earlier cheque was denied. It was stated that during the course of business and settlement of some of the accounts the subsequent cheque was issued.

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(1) (1998) 5 S.C.C. 749

The amount *qua* the earlier cheque dated 3rd March, 2005 still stood unpaid. the complaint was perfectly valid and in any case this Court was precluded from going into the facts of the case. The order was sought to be justified on the ground that *prima facie* the commission of the offence has to be established which is sufficient for the Court to issue the process.

(5) I have heard the learned counsel for the parties at length and have perused the record.

(6) The foremost contention as raised by the learned counsel for the petitioners is that one cheque had been dishonoured but subsequently in lieu of the said cheque another cheque had been issued and hence the liability stood discharged. This fact was vehemently denied by the learned counsel appearing for the respondent who referred to the photo copy of the cheque in question to demonstrate that the cheque had been presented only once and thereafter another cheque was issued which was also returned on 25th August, 2005. The payment had been stopped.

(7) In proceedings under Section 482 of the Code, this Court is not to go into the truthfulness of the allegations. Once a complaint discloses the commission of an offence, the veracity of the allegations is not to be tested in proceedings under Section 482 of the Code as the same had to be tested in the backdrop of the evidence which is yet to come on record.

(8) The Hon'ble Supreme Court in **Smt. Nagawwa versus Veeranna Shivalingappa Konjalgi and others** (2) has observed as under :—

“At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one”.

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“It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

- (1) Where the allegations made in the complaint or the statement 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.”

(9) Further, in **State of Haryana & others versus Ch. Bhajan Lal & others** (3) the Hon'ble Supreme Court observed as follows :

“In following categories of cases, the High Court may in exercise of powers under Art. 226 or under S. 482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that too in the rarest of rare cases .

- (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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156 (1) of the Code except under an order to a Magistrate within the purview of S. 155 (2) of the code.
- (3) Where the uncontroverted allegations made in the F.I.R. 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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order a Magistrate as contemplated under S.155(2) of the Code.
- (5) Where the allegations made in the F.I.R. 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 concerned Act (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 concerned Act, providing efficacious redress for the grievances of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with *mala fide* 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.

Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of F.I.R. was not justified”.

(10) In a complaint under Section 138 of the Act if the Magistrate on perusal of the complaint and on the strength of the preliminary evidence *prima facie* finds that the allegations made therein come within the ambit of the aforesaid provisions of law indicating the commission of the offence, then the necessary process has to be issued. The Magistrate is not to give detailed reasons while setting into motion the process of law for summoning the accused persons. Satisfaction of the ingredients of commission of the offence having been made out from the perusal of the complaint is the sole criteria for setting into motion the process of law. The contention of the petitioners that the contents of the reply of the notice should have been dealt with by the trial court while passing the impugned order of summoning is not tenable. The reply to the notice is the defence of the petitioners, who are the accused, and at the time of summoning it is not necessary to go into the same. Learned counsel for the petitioners had relied on the judgement in **Pepsi Foods Limited & another versus Special Judicial Magistrate & others**

(supra) with specific reference to para 28 wherein the Hon'ble Supreme Court has observed as follows :

“Summoning of an accused in a criminal case is a serious matter, Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witness to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

(11) There is absolutely no dispute about the aforesaid observations. The trial court after perusing the complaint and the statement of the attorney of the complainant as also the affidavit had come to the conclusion that the summoning of the petitioners was desirable. Satisfaction of the Magistrate that a *prima facie* case is made out has been recorded. At the stage of summoning, the court was not required to meet the defence of the accused and for the similar reason this court is precluded from entering into the arena wherein the veracity of the allegations made in the complaint are to be commented upon.

(12) For the reasons stated above, no case has been made out for interference under Section 482 of the Code.



(13) Petition is dismissed.

(14) During the course of proceedings, learned counsel for the petitioners prayed that in the event of this Court coming to the conclusion that the present petition warrants dismissal then the petitioners are ready and willing to deposit the amount of Rs. 2 lakh before the trial Court and in that eventuality their personal appearance be exempted.

(15) Having regard to the totality of the circumstances, with special reference to the fact that the parties have business dealings, it would be appropriate if the petitioners are directed to deposit an amount of Rs. 2 lakh before the trial court within a period of three weeks. In the event of such an amount being deposited, the personal appearance of the petitioners shall remain exempted subject to their filing an affidavit in the following terms :

- (i) undertake to appear before the trial Court, as and when so directed ;
- (ii) undertake that they would have no objection if the evidence is recorded in their absence;
- (iii) undertake not to raise any dispute as to identity;
- (iv) undertake to comply such other conditions, as may be imposed by the trial court.

Liberty is granted to appear through counsel.

(16) It is made clear that the petitioners would be bound by the affidavit and such conditions, as the trial Court may deem appropriate. In case, the petitioners violate the terms and conditions of the affidavit, or such other terms and conditions, as may be imposed by the trial Court, the trial Court shall be at liberty to proceed against the petitioners, in accordance with law.

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**R.N.R.**