

High Court of Madhya Pradesh: Bench at Indore

Single Bench: Hon'ble Shri Justice Ved Prakash Sharma

M.Cr.C. No.538/2016

Shaili Mune

Versus

Yash Technologies Pvt. Ltd.,

Shri R.S. Chhabra, learned counsel for the petitioner.
Shri Aniruddha Gokhale, learned counsel for the respondent.

J U D G E M E N T

(Passed on 03.11.2016)

This petition under Section 482 of Code of Criminal Procedure, 1973 (for short "The Code") has been preferred against issuance of process by the Court of the learned Additional Chief Judicial Magistrate, Indore in Cr. (complaint) Case No.32669/2015, registered on the basis of Cr. complaint preferred by Yash Technologies Pvt. Ltd., (for short "the respondent") against the petitioner for offence under Section 138 of Negotiable Instrument Act, 1881 (for short "The Act"), whereby the petitioner was directed to appear before the Court.

The respondent has filed the criminal complaint with the averments that the petitioner, pursuant to offer letter dated 05/09/2014, was appointed as trainee consultant, vide agreement dated 08/09/2014. It is further averred that in terms of the agreement, the petitioner was required to pay Rs.2.00 lakhs, in case, she leaves the company within 45

days. It was further averred that the petitioner left the job on 03/03/2015 without assigning any reason resulting in substantial loss to the company to the tune of Rs.2,00,000/-. It is also averred that to make good the loss a cheque, for a sum of Rs.2.00 lac, bearing No.301736 dated 16/06/2015 was issued by the petitioner in favour of the company, however, the same was dishonoured by the banker with an endorsement- "funds insufficient". It was also averred that after dishonour of the cheque, the petitioner failed to pay the amount of the cheque, despite statutory demand notice dated 25/06/2015, therefore, she is liable to be punished under Section 138 of "The Act".

Learned Magistrate, directed issue of summons calling upon the petitioner, to appear before the Court on 28/01/2016.

The petitioner prayed for quashment of the summons on the ground that a case under Section 138 of "The Act" is not made out against her because she did not owe any money to the respondent. It is submitted that as per the agreement dated 08/09/2014, the petitioner would have been liable to pay a sum of Rs.2.00 lac, only if she left the company within 45 days of her joining, however, as she had rendered her services from 08/09/2014 to 03/03/2015 (i.e.) for 175 days, therefore, the question of payment of Rs.2.00 lac by her to the respondent did not arise. It is further submitted that registration of a complaint and issuance of summons against her is illegal and unjust because no legally enforceable debt or liability was there against the petitioner,

hence, the summons issued against her, by the learned trial Court deserves to be quashed.

Learned counsel for the petitioner placing reliance upon decision of the apex Court in *M.S. Narayana Menon @ Mani v. State of Kerala and another* 2006(4) M.P.L.J. 97 (S.C.) and the decision of this Court in *Mahinder Singh Bhasin v. Ssangyong Engineering and Construction Co. Ltd., 2015 (4) M.P.L.J. 134* has contended that the petitioner had left her job on account of her illness and that a blank dated cheque was issued by the petitioner in favour of the respondent at the time of joining of the services. The respondent by exercising its dominant position has misused the cheque by filling up the date subsequent to the date of joining, therefore, the criminal proceedings initiated by way of complaint case amount to misuse and abuse of the criminal process. It is further contended that a cheque issued for security or for any other purpose would not come within the purview of Section 138 of “The Act” and, therefore, in such a situation, complaint case for offence under Section 138 of “The Act”, being not legally maintainable, is liable to be quashed.

Per contra, learned counsel for the respondent relying upon the pronouncement of apex Court in *State of Haryana and others v. Bhajanlal and others, AIR 1992 Supp (1) SCC 335* and *HMT Watches Limited v. M.A. Abida and Another, (2008) 13 SCC 678* has submitted that a complaint case can be quashed only if the allegations made in the complaint, even if accepted in their entirety at face value, do

not, *prima-facie*, make out a case against the accused. It is contended that disputed questions of fact which can be decided only on due appreciation of evidence during trial cannot be examined in exercise of jurisdiction under Section 482 of “The Code”. It is further submitted that the averments made in the complaint, a copy of which has been filed along with the petition, *prima-facie* disclose necessary ingredients to constitute an offence under Section 138 of “The Act”. Whether the cheque in question was issued towards discharge of legally enforceable debt or liability and whether the alleged blank space with regard to date of issuance of cheque was subsequently filled by the respondent, are disputed questions of fact and, therefore, can be decided only after appreciation of evidence, hence this Court in exercise jurisdiction under Section 482 of “The Act” cannot enter into and decide the disputed questions of fact, therefore, the petition is liable to be dismissed.

Heard learned counsel for the parties and perused the record.

In the present case, the petitioner has raised the dispute as to whether the cheque in question was issued towards legally enforceable debt or liability. Contrary stands have been taken by the complainant and respondent in this regard, therefore, the issue can be considered only on the basis of evidence.

In *M/s. Narayana Menon @ Mani's case (Supra)*, a case relied upon by the petitioner, it has been held that applying the definitions of “proved” or “disproved” to the principle behind

section 118(a) of “the Act”, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. It has further been held that for rebutting such presumption, what is needed is to raise a probable defence and that whether in the given facts and circumstances of a case, the initial burden has been discharged by an accused would be a question of fact relating to appreciation of evidence.

In *HMT Watches Limited's case (Supra)*, another case relied upon by learned counsel for the respondent, it has been held as under:

“Having heard learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. ***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. The High Court further erred in observing that Section 138(b) of N.I. Act stood uncomplained, even though the respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to

whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

(Emphasis supplied)

In the aforesaid case, referring to “*Suryalakshmi Cotton Mills Ltd v. Rajvir Industries Ltd. (2008) 13 SCC 678*” with regard to exercise of jurisdiction under Section 482 of “The Code”, it has further been held that in exercise of jurisdiction, under Section 482 the High Court would not generally enter into disputed questions of fact.

Though in *Mahinder Singh's case (Supra)*, a case relied upon by learned counsel for the respondent, a Single Bench of this Court has quashed the proceedings initiated on the basis of complaint under Section 138 of “The Act” on the ground that the cheque under question was issued as security, however, in view of dictum of the apex Court in *HMT Watches Ltd's case (Supra)* the issue whether the cheque was issued as security and whether there was outstanding liability or not, being questions of fact, cannot be decided in a petition under Section 482 of “The Code”.

In view of the aforesaid, no ground is made out to quash the proceedings in the criminal complaint case NO.32669/2016, in exercise of powers under Section 482 of “The Code”. Accordingly, this petition is dismissed.

Certified copy as per rules.

(Ved Prakash Sharma)
Judge