IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48700-2019 (O&M)
Reserved On: 29.04.2026
Pronounced on: 27.07.2026

Rajesh Goyal ...**Petitioner**

VS

State of Haryana & Another ...**Respondents**

CORAM: HON'BLE MR. JUSTICE SUBHAS MEHLA

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. Arjun Singh, Advocate, and
Mr. Sehejbir Singh, Advocate, for the petitioner.

Mr. Satbir Singh Goripuria, DAG, Haryana.

Mr. Arjun Kaushal, Advocate
for respondent No.2.

***

SUBHAS MEHLA, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for quashing of Complaint No.NACT/111/2019 titled '*Sunit Bansal vs. Rajesh Goyal'* dated 17.01.2019 instituted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter, 'the Act'), pending before the learned Judicial Magistrate 1st Class, Panchkula (Annexure P-1).

BRIEF FACTS

2. Briefly stated, respondent No.2-complainant entered into an Agreement to Sell dated 22.10.2015 (Annexure P-2) with M/s RG Residency Pvt. Ltd., through its Managing Director, namely the present petitioner, in respect of two residential units in a group housing project being developed by

the company at Plot No. GH-02, Sector-120, Noida. The total sale consideration agreed between the parties was Rs.45,00,000/-, which admittedly stood paid by respondent No.2. In terms of the agreement, the sale deed in respect of the said units was to be executed on or before 30.09.2018. The agreement further contemplated that in the event the sale deed was not executed by the stipulated date, respondent No.2 would become entitled to refund of the entire amount paid towards the said units.

3. Towards discharge of the obligations arising out of the aforesaid transaction, M/s RG Residency Pvt. Ltd. issued post-dated cheque No.407322 dated 30.09.2018 for a sum of Rs.45,00,000/- towards refund of the principal amount and appreciation cheques bearing Nos.407339 and 969832, each in the sum of Rs.3,03,750/-. The petitioner is further stated to have executed an affidavit and a Personal Guarantee in favour of respondent No.2 and, in pursuance thereof, issued cheque No.336743 dated 30.09.2018 for a sum of Rs.45,00,000/- drawn on his personal account.

4. According to the complaint, the sale deed was not executed within the stipulated period. All the aforesaid cheques were presented for encashment on 27.11.2018 and came to be dishonoured with remarks “Funds Insufficient” vide Returning Memo dated 28.11.2018. The present proceedings are concerned with the complaint founded upon dishonour of cheque No.336743 issued by the petitioner from his personal account. A statutory notice dated 24.12.2018 was thereafter issued to the petitioner and upon failure of payment within the prescribed period, the complaint in question came to be instituted. Aggrieved by the initiation of the aforesaid

proceedings, the petitioner has approached this Court by way of the present petition.

CONTENTIONS ON BEHALF OF THE PETITIONER

5. Learned counsel for the petitioner assailed the complaint in question by contending that it is a gross abuse of the process of law and deserves to be quashed. It was contended that the transaction in question essentially arises out of an Agreement to Sell executed between respondent No.2 and M/s RG Residency Pvt. Ltd. and that the petitioner has been unnecessarily dragged into criminal proceedings despite there being no legally enforceable debt or liability against him. Learned counsel submitted that the Agreement to Sell was executed between respondent No.2 and M/s RG Residency Pvt. Ltd. and, therefore, the liability, if any, was that of the company and not of the petitioner in his individual capacity. Learned counsel further contended that the cheque in question was issued merely by way of guarantee/security for the obligations of the company and that the ingredients necessary for attracting Section 138 of the Act are, therefore, not satisfied.

6. Learned counsel further submitted that the complainant simultaneously presented the cheque issued by the company towards refund of the principal amount and the cheque issued by the petitioner under the Personal Guarantee (Annexure P-3). According to learned counsel, the liability of the guarantor could arise only after failure of the principal debtor to discharge its obligation and after invocation of the guarantee in accordance with law. It was argued that no legally enforceable liability had crystallized against the petitioner on the date of presentation of the cheque and, therefore, the essential ingredients of Section 138 of the Act are not satisfied. Hence,

learned counsel submitted that continuation of the criminal proceedings would amount to abuse of the process of law and the complaint deserves to be quashed.

CONTENTIONS ON BEHALF OF STATE

7. Learned State counsel submitted that the petitioner in the present case is being prosecuted under Section 138 of the Act, and the private respondent /respondent No.2 is the principal contesting party, and further, that the controversy essentially pertains to the *inter se* dispute between the petitioner and respondent No.2. Accordingly, learned State counsel submitted that the State has no significant role in the present case, and left the matter to the discretion of the Court.

CONTENTIONS ON BEHALF OF RESPONDENT NO.2

8. Learned counsel appearing on behalf of respondent No.2 submitted that the complaint, read in conjunction with the documents relied upon therein, clearly discloses commission of an offence under Section 138 of the Act.

9. Learned counsel submitted that apart from executing the Agreement to Sell on behalf of the company, the petitioner furnished a Personal Guarantee and issued cheque No.336743 dated 30.09.2018 from his personal account, and thereafter repeatedly acknowledged his liability through various writings and undertakings. Particular reference has been made to the affidavit and Personal Guarantee (Annexure P-3), the ratification dated 26.10.2018 (Annexure R-2/7) and the undertaking dated 20.01.2019(Annexure R-2/5). Learned counsel argued that the defence now being taken by the petitioner is contrary to the documents executed by him and raises disputed

questions of fact which can only be adjudicated upon in trial. Learned counsel accordingly prayed for dismissal of the petition.

OBSERVATIONS AND ANALYSIS

10. Heard and record perused.

11. While exercising jurisdiction under Section 482 Cr.P.C., the Court is not required to adjudicate upon the merits of the rival claims or determine the probable defence of the accused, which are matters falling within the province of the trial Court. Hence, the principal question which arises for consideration is whether, on a prima facie appraisal of the complaint and the material relied upon by the complainant, the ingredients necessary to constitute an offence under Section 138 of the Act are disclosed against the petitioner.

12. The principal submission advanced on behalf of the petitioner is that the cheque in question was issued by him in the capacity of a guarantor and that the liability, if any, was that of M/s RG Residency Pvt. Ltd., being the principal debtor. It has further been argued that the complainant simultaneously sought to proceed against both the principal debtor and the guarantor and, therefore, the ingredients of Section 138 of the Act are not attracted against the petitioner.

13. Although the petitioner has sought to challenge the complaint before this Court in light of the provisions governing the contract of guarantee, however, the present case cannot be viewed solely in the context of the law relating to guarantees, while disregarding the surrounding circumstances and the contemporaneous documents placed on record.

14. A perusal of the record reveals that the petitioner was not a stranger to the transaction in question. The Agreement to Sell dated 22.10.2015 (Annexure P-2) was executed by M/s RG Residency Pvt. Ltd. through the petitioner in his capacity as Managing Director. The affidavit forming part of Annexure P-3 specifically records that the petitioner was the Managing Director, authorized signatory and the person in charge of the day-to-day affairs of the company. The petitioner further affirmed therein that he possessed authority to execute documents relating to the transaction and that the obligations arising therefrom would be honoured. Thus, the petitioner was not merely a third-party guarantor unconnected with the underlying transaction, but was the very individual who represented the company and admittedly controlled its affairs.

15. Equally significant is the Personal Guarantee (Annexure P-3) executed by the petitioner. The document expressly stipulates that in the event M/s RG Residency Pvt. Ltd. failed to execute the sale deed by 30.09.2018, the petitioner and his successors would stand as principal debtors to respondent No.2 to the extent of Rs.45,00,000/-. The said document further records the issuance of cheque No.336743 dated 30.09.2018 for Rs.45,00,000/- from the petitioner's personal account and contains a specific assurance that the cheque would be honoured upon presentation.

16. The aforesaid circumstances are further reinforced by the undertaking dated 20.01.2019 (Annexure R-2/5) executed by the petitioner. In the said undertaking, the petitioner unequivocally acknowledged his legal liability towards respondent No.2, admitted that the cheques deposited in the bank with his consent had been dishonoured and further assured that the

outstanding liabilities would be cleared by 31.03.2019. Prima facie, therefore, the petitioner was not only aware of the dishonour of the cheque in question but also consciously accepted the liability arising therefrom.

17. The cumulative effect of the aforesaid documents assumes significance in the facts of the present case. The petitioner seeks to resist the proceedings by emphasizing that he acted merely as a guarantor. However, the record simultaneously discloses that he was the Managing Director of the company, admittedly in charge of its affairs, the executant of the Personal Guarantee, the drawer of the cheque in question and, subsequently, a signatory to an undertaking acknowledging the liability in express terms. These circumstances cannot be viewed in isolation from one another while considering the prayer for quashing.

18. At this stage, this Court is only required to examine whether the complaint and the material placed on record prima facie disclose commission of an offence under Section 138 of the Act. The scope of enquiry is not to determine the guilt or innocence of the accused but merely to assess whether the foundational ingredients necessary for continuation of the prosecution are disclosed from the material available on record. For facility of reference, Section 138 of the Act is reproduced hereunder:-

> *"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be*

> *deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
>
> *Explanation.—*
>
> *For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"*

The facts of the present case indicate that the cheque in question was admittedly issued by the petitioner from his personal account; that the same was issued in connection with the obligations arising out of the transaction between the parties, more particularly, in terms of the Personal Guarantee furnished by him; that the cheque was presented within its validity period and was dishonoured for insufficiency of funds; and that despite issuance of the statutory notice, the amount remained unpaid within the prescribed period. It is also not the petitioner's case that on the date the cheque was presented for encashment, the liability in question already stood discharged or that the obligations arising under the underlying transaction had otherwise been duly satisfied. Accordingly, on a prima facie consideration of the material presently available on record, the essential ingredients contemplated under Section 138 of the Act appear to be satisfied.

Whether the petitioner ultimately succeeds in establishing his defence, and whether the various documents relied upon by the respective parties bear the legal consequences sought to be attributed to them, are matters which fall within the domain of the trial Court and such questions can only be adjudicated upon after the parties have led their respective evidence. Entertaining these questions at the threshold stage would amount to converting proceedings under Section 482 Cr.P.C. into a trial before the trial itself. The inherent jurisdiction under Section 482 Cr.P.C. is not intended to facilitate a mini-trial, nor can it be invoked to stifle a prosecution other than in exceptionally compelling circumstances which evince misuse of legal procedure and perversion of justice.

Quashing of criminal proceedings is an extraordinary remedy. It is intended to prevent manifest abuse of the process of law and to secure the ends of justice in cases where continuation of the proceedings would be wholly unwarranted. Unless the allegations, taken at their face value, fail to disclose the commission of any offence, or the prosecution is demonstrably frivolous, vexatious or legally untenable, the criminal process ordinarily ought to be permitted to take its course. The present case does not fall within any such exceptional category. This Court would, therefore, refrain from undertaking a detailed examination of disputed factual issues or conducting a roving enquiry into the merits of the rival claims.

19. The object underlying Section 138 of the Act is to enhance the credibility of commercial transactions and to instill confidence in the use of cheques as a reliable instrument of payment. The provision seeks to ensure that a person who issues a cheque in discharge of an admitted liability does not evade the consequences flowing from its dishonour. In the peculiar facts of the present case, where the petitioner had due notice of the dishonour, expressly acknowledged the liability and nevertheless failed to honour the commitment undertaken by him, this Court finds no justification interdict the proceedings at the threshold stage.

20. In view of the above circumstances, arguments advanced and documents on record, this Court is satisfied that the complaint and the material accompanying it *prima facie* disclose the ingredients necessary to attract Section 138 of the Act. This conclusion is not solely founded upon the petitioner's status as a guarantor, but upon the cumulative effect of the documents executed by him and the subsequent acknowledgements made after dishonour of the cheque in question. The Agreement to Sell (Annexure P-2), the Personal Guarantee (Annexure P-3) executed by the petitioner, the affidavit forming part of Annexure P-3, the subsequent ratification and the undertaking dated 20.01.2019 (Annexure R-2/5), when taken at their face value, furnish sufficient material to sustain the continuation of the proceedings at this stage.

21. Needless to say, the precise nature and extent of the petitioner's liability, and the cumulative impact of the surrounding circumstances are matters which

would appropriately fall for consideration before the learned trial Court upon appreciation of the evidence led by the parties. It is clarified that the observations recorded herein are confined solely to the adjudication of the present petition under Section 482 Cr.P.C. and shall not be construed as an expression of opinion on the merits of the case. The defences sought to be raised by the petitioner are matters which remain open to be urged before the learned trial Court at the appropriate stage.

22. Consequently, finding no merit in the present petition, the same is dismissed.

23. Pending miscellaneous application(s), if any, also stand disposed of.

(SUBHAS MEHLA)
JUDGE

27.07.2026
Geeta

Whether Speaking/Reasoned: YES/NO

Whether Reportable: YES/NO