

**IN THE COURT OF Ms. HARPREET KAUR, PCS  
JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS,  
AMRITSAR  
UID NO. PB0526**

Case No.	NACT/5870/2019
CNR No.	PBASO30197882019
Date of Institution	21.11.2019
Date of order	19.08.2021

**RP Vijay Khanna Vs M/s R.P.Raghav Khanna**

**Application for dismissal of complaint**

Present:- Sh.Amit Bhatia , Adv. counsel for the complainant.

Sh. Anil Bhatia, Adv. counsel for the accused.

**ORDER:-**

1. This order of mine shall dispose of an application for discharge of accused as well as dropping the proceedings against him so filed by the ld.counsel for the accused.
2. The **Ld.counsel for the accused** reiterating the averments of the application argued that the complainant has not come up with clean hands and has concealed the fact regarding receiving of payment with respect to the cheque in question. He has further substantiated his plea with the statement of accounts.
3. Per contra, **the Ld.counsel for the complainant** argued that the present application is not maintainable as the copy of account relied upon is a false document and application warrants to be dismissed at the very threshold.
4. Heard. File perused. Both the counsels have argued in line with the averments of the application as well as reply thereto.

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*Harpreet Kaur, JMJC, Amritsar UID No. PB0526 Dated:19.08.2021*

5. Perusal of the case file, the Court is of the opinion that vide detail summoning order accused was made to face the trial on the basis of cheque so issued by him under his name Ex.C1 and Ex.C2 which were subsequently dishonoured so intimated by Ex.C3 and Ex.C4. Even separate notice to the accused was issued and same is supported by the acknowledgment receipt on record. Admittedly, the summoning order has not been challenged till date. The accused has been summoned on the basis of prima facie evidence so explicit from the affidavit of the complainant as well as from the Bank Memo. The ld.counsel for the accused has pressed upon the bank statement vide which payments were made on 09.02.2020 as well as on 23.03.2021 which is the date after filing of the present compliant. Apparently, no payment was made after the notice was duly served upon the accused. Moreso, with respect to the statement of account the evidence is to be adduced and at this stage merely from the averments, it cannot be made out that the accounts have been settled against both cheque amounts. Moreso, the averments mentioned in the application are to be proved by adducing evidence and same cannot be adjudicated at such stage.

*Trial that alone can bring out the truth so as to arrive at a just and fair decision for the parties concerned*

*(Summy Bhasin Vs. State of Act of Delhi 2021 SSC Online Del 1189, decided 10.03.2021)*

6. Coming to the settled law, the offence under Section 138 of Negotiable Instruments Act is punishable with imprisonment,

which may extend to two years or with fine or with both and it is a summons-case.

7. Section 245 CrPC provides for discharge of the accused if no case against the accused has been made out upon taking all the evidence for prosecution in a warrant-case otherwise than on a police report. The said provision is not applicable to a case relating to an offence under Section 138 of Negotiable Instruments Act, since it is a summons case and the petitions for discharge, filed in the present cases, under Section 245 CrPC are not maintainable.
8. Chapter XX of CrPC deals with trial of summons-cases by the Magistrate under Sections 251 to 259 Cr.P.C and it is relevant to note that no provision to discharge the accused is provided. Only under Sections 251 Cr.P.C, the power to stop proceedings in certain cases is provided and that is limited to summons-case instituted otherwise than upon complaint, that is, the cases mentioned in Sections 190(1)(b) and (c), in which, cognizance is taken upon a police report or upon other information or own knowledge of the Magistrate. Hence, the power under Sections 258 Cr.P.C cannot be invoked in any summons case instituted on a complaint of facts, which is stipulated in Sections 190(1)(b) and (c) Cr.P.C. The proceedings under Section 138 of Negotiable Instruments Act, being a summons-case, instituted on a complaint, cannot be stopped by invoking the power under Section Cr.P.C. In short, there is no provision providing for discharge of the accused in a summons-case

and there is no power to stop proceedings invoking the power under Section 258 of the Code.

9. To buttress the abovesaid discussion, I am supported by dictum of the Hon'ble Apex Court in *Subramaniam Sethuraman v. State of Maharashtra (2004) 13 SCC 324* , by reiterating law observed that,

*"the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case."*

10. In view of the above decision, making an application for dismissal of the complaint, for reconsideration of the material available on record is impermissible and hence the present application seeking for dismissal of the complaint are not maintainable in law and same stands dismissed accordingly.

Date of Order: 19.08.2021  
Chandni

(Harpreet Kaur)  
Judicial Magistrate - Ist Class  
UID NO . PB00526