

**CRIMINAL REVISION**

Present: **The Hon'ble Justice Ashim Kumar Roy**

*C.R.R. No. 734 of 2010*

**Judgment On: 31-03-2010.**

*Gobinder Singh Jaggi @ Sunny Singh*

*versus*

*M/s. Bansal Motors Corporation*

**POINTS:**

QUASHING- Legally enforceable debt or liability or the cheque was issued by the petitioner is a pure question of fact- Whether can be taken into consideration to decide the question of quashing -Negotiable Instruments Act, S.138 -Code of Criminal Procedure, 1973 S.482.

**FACTS:**

The petitioner has moved this Court for quashing of a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act.

**HELD:**

Since the petitioner is seeking for quashing of the complaint, this Court has to confine itself with the allegations made in the petition of complaint and to see whether on the face of such allegations and without disputing the correctness of the same, the offence alleged has been made out or not. Neither was there any legally enforceable debt or liability nor the cheque was issued by the petitioner is a pure question of fact and cannot be taken into consideration to decide the question whether the complaint is liable to be quashed or not. The Court finds that there has been specific allegation that the cheque in question was issued by the petitioner in discharge of some legally enforceable debts. The truth or falsehood of such allegations cannot be gone into at this stage. Para-3

For Petitioner: Mr. Debasish Roy

**THE COURT:**

1. Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved this Court for quashing of a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Debasish Roy, learned Counsel appearing for the petitioner. Perused the materials on record.

3. It is vehemently contended by Mr. Roy that the cheque in question was neither by the petitioner nor it was drawn on an account maintained by him. Since the petitioner is seeking for quashing of the complaint, this Court has to confine itself with the allegations made in the petition of complaint and to see whether on the face of such allegations and without disputing the correctness of the same, the offence alleged has been made out or not. The contention of the learned advocate of the petitioner, neither there was any legally enforceable debt or liability nor the cheque was issued by him is a pure question of fact and essentially the defence of the accused and cannot be taken into consideration to decide the question whether the complaint is liable to be quashed or not. Having gone through the petition of complaint, I find that there has been specific allegation that the cheque in question was issued by the petitioner in discharge of some legally enforceable debts. The truth or falsehood of such allegations cannot be gone into at this stage.

4. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

5. However, dismissal of this criminal revision will not preclude the petitioner to raise the same point as his defence during the trial.

6. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**