

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. M-2089 of 2011 (O&M)
Date of decision: 24.8.2015

Roshan Lal

.. Petitioner

v.

Neelam Gupta

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Vijay Sharma, Advocate for the petitioner.
Ms. Bindu Goel, Advocate for the respondent.

...

Rajesh Bindal J.

In the present petition, the petitioner seeks quashing of orders dated 14.6.2010, vide which he was summoned in the said complaint and 15.10.2010, vide which the application filed for dropping the proceedings against him in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was dismissed.

Learned counsel for the petitioner submitted that the petitioner had issued a cheque dated 20.1.2010 for a sum of ₹ 15,00,000/- to the respondent on account of the amount settled as permanent alimony during the pendency of a matrimonial dispute. As per the settlement arrived at between the parties, the respondent was to withdraw the application filed by her under Section 125 Cr.P.C., however, she having not withdrawn the same, the payment of cheque was stopped. Divorce was granted by this court by mutual consent vide order dated 1.4.2010 passed in FAO No. 152-M of 2007. Against that order, the respondent filed Review Application No. 104-CII of 2010 raising a grievance regarding non-receipt of ₹ 15,00,000/-. During the pendency thereof, the petitioner paid the amount by way of

demand draft for a sum of ₹ 5,00,000/- in favour of the respondent, three FDRs for a total sum of ₹ 5,00,000/- in favour of son-Abhishek and three FDRs for a total sum of ₹ 5,00,000/- in favour of Anikita. Total amount of ₹ 15,00,000/- having been paid, the review application was disposed of. The present complaint was filed by the respondent with ulterior motive on 14.6.2010. As the amount equivalent to that of the cheque had already been paid, the claim made in the complaint does not survive.

On the other hand, learned counsel for the respondent submitted that the petitioner had cheated the respondent and her family members. By playing fraud, he made them to sign the compromise, the terms of which were not adhered to by him. He does not deserve to be granted any benefit. The trial in the complaint should continue. However, the fact regarding receipt of ₹ 15,00,000/- has not been disputed.

Heard learned counsel for the parties and perused the paper book.

The complaint was filed in the case in hand by the respondent alleging that a cheque of ₹ 15,00,000/- dated 20.1.2010 issued by the petitioner in favour of the respondent was returned uncleared with the remarks "stop payment". It was alleged that in fact as on the relevant date, there was no money available with the petitioner, he stopped payment of the cheque. Even on demand, the payment was not made. It is nowhere pleaded in the complaint as to on what account, the cheque was issued by the petitioner to the respondent. After the petitioner was summoned vide order dated 14.6.2010, he filed application seeking dropping of the proceedings taking the plea that the amount equivalent to the cheque was paid by him vide FDR No. CTD/1-907237 of ₹ 2,00,000/-, FDR No. CTD/1-907238 of ₹ 2,00,000/-, FDR No. CTD/1-907239 of ₹ 1,00,000/-, FDR No. CTD/1/907240 of ₹ 2,00,000/-, FDR No. CTD/1-907241 of ₹ 1,00,000/- and FDR No. CTD/1-907242 of ₹ 2,00,000/- dated 5.7.2010 of State Bank of Patiala Branch Samana and another amount of ₹ 5,00,000/- was paid vide DD No. 937276 dated 6.7.2010. The application was dismissed by the learned court below vide order dated 15.10.2010.

In the case in hand, the parties were litigating on account of matrimonial dispute. The divorce petition filed by the petitioner was dismissed by the trial court. During the pendency of appeal before this court, the matter was compromised. As per settlement, decree of divorce was granted by way of mutual consent. In the statement made by the parties before this court on 1.4.2010, it was stated that the wife had received, past, present and future maintenance for herself and on behalf of two children born out of the wedlock. The cheque of ₹ 15,00,000/- had been issued by the petitioner to the respondent prior thereto, i.e., January, 2010. It was pleaded in RA No. 104-CII of 2010 that the petitioner had issued a cheque dated 20.1.2010 for ₹ 15,00,000/- in the name of the respondent with an understanding that it will be presented for payment after grant of decree of divorce and will be encashed. When the cheque was presented for payment, the same was returned with the objection “stop payment”. On that ground, review of the order granting divorce by way of mutual consent was prayed for. Justification for stop payment of cheque is available. During the pendency of the aforesaid review application, the petitioner paid a sum of ₹ 15,00,000/- to the respondent by way of FDRs for total sum of ₹ 10,00,000/- in the name of the son and the daughter and a demand draft of ₹ 5,00,000/- in favour of the respondent. It is so recorded in the order passed on 30.8.2010, which is extracted below:

“One demand draft bearing No. 937276 dated 6.7.2010 for a sum of ₹ 5,00,000/- in favour of Neelam Gupta, three FDRs (bearing Nos. 907240 to 907242) for a sum of ₹ 5,00,000/- in favour of Abhishek and three FDRs (bearing Nos. 907237-907239) for a sum of ₹ 5,00,000/- in favour of Anikita have been handed over by learned counsel for the non-applicant to the learned counsel for the applicant.”

The review application was disposed of as the amount settled as alimony, on account of which cheque of ₹ 15,00,000/- had been issued, already stood paid. It was thereafter that the complaint under Section 138 of the Act was filed.

Considering the aforesaid factual matrix, whereby the amount of cheque had already been paid by the petitioner to the respondent and in the form of FDRs in the names of the children born out of the wedlock, in my opinion, continuation of the proceedings in the complaint would be an abuse of process of court. However, still keeping in view the fact that the cheque was issued by the petitioner in January, 2010 and the amount was ultimately paid in August, 2010, he is required to pay interest for this period, which comes out to ₹ 1,20,000/-. Let that amount be paid by the petitioner in the form of three bank drafts in the names of the respondent and two children born out of the wedlock. The amount be paid within a period of two months.

For the reasons mentioned above and subject to the condition, as noticed aforesaid, the complaint filed by the respondent under Section 138 of the Act and all consequential proceedings are quashed.

The petition stands disposed of.

(Rajesh Bindal)
Judge

24.8.2015
mk

(Refer to Reporter)