

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-2079 of 2013

.....

Date of decision:28.8.2015

Chanda

.....Petitioner

v.

Ashwani Kumar

.....Respondent

.....

Present: Mr. Vaibhav Narang, Advocate for the petitioner.

Mr. M.S. Sidhu, Advocate for the respondent.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of criminal complaint No.378 dated 26.7.2012 (Annexure-P.6) titled as “Ashwani Kumar Versus Chanda” filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the Act’), pending in the Court of Judicial Magistrate Ist Class, Panchkula, and also summoning order dated 8.10.2012 (Annexure-P.7), whereby the petitioner has been summoned to face the trial and the revision petition filed by the petitioner has been dismissed.

Notice of motion was issued in this case. Mr. M.S. Sidhu, learned Advocate has put in appearance on behalf of the respondent and contested this petition.

Learned counsel for the petitioner argued that this complaint

under Section 138 of the Act is nothing but an abuse of the process of the Court. The loan amount is stated to have been given in the year 2005 when the parties were residing together as husband and wife. It is argued by the learned counsel for the petitioner that marriage between the parties took place on 7.9.2004, but they separated on 19.9.2008 and the marriage was declared as null and void on the ground of being Spinda relationship on 4.1.2011. The present complaint has been filed in the year 2012. It is argued that the present complaint regarding dishonour of the cheque etc. under Section 138 of the Act is nothing, but an abuse of the process of the law.

On the other hand, learned counsel for the respondent argued that the present petitioner has issued the cheque towards the loan amount of ₹10 Lacs regarding which present petitioner Chanda had executed the receipt on 13.12.2005 and further this fact has been admitted in the agreement effected between the parties and the cheque dated 28.3.2012 was issued, which was presented and dishonoured.

After going through the record and after hearing learned counsel for the parties, I find that the counsel for the petitioner argued that above said documents i.e. receipt and the agreement are forged documents, whereas the learned counsel for the respondent argued that these documents have been executed by the present petitioner. Learned counsel for the petitioner further argued that the cheque was lying in the matrimonial house when they had separated and it has been forged by the present respondent, whereas the case of the respondent is that this cheque had been issued as per

the agreement between the parties which is Annexure-R.2.

This is a quashing petition and the parties are in dispute regarding the facts whether the receipt and the agreement between the parties are genuine documents or forged documents and whether the cheque had been misused or it was given as per the agreement (Annexure-R.2) by the present petitioner to the respondent. All these disputed facts are to be decided by the trial Court on the basis of evidence. Without the evidence, in no way, it can be held that whether the documents Annexure-R.1 and R.2 are the genuine documents or forged documents. Similarly, this is finding of fact which is to be given by the trial Court whether the cheque is given by the present petitioner to the respondent as per agreement or it is misused.

Therefore, from the above discussion, I find that the finding of fact cannot be given in quashing petition. Revision petition of the petitioner has already been dismissed by the learned Additional Sessions Judge. Consequently, I do not find any ground to quash the criminal complaint as well as the summoning order. Hence, finding no merit in this petition, the same is dismissed.

August 28, 2015.

(Inderjit Singh)
Judge

hsp