

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-36116-2013
Date of decision:12.10.2015**

Ms.Lalita Gulati

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Vikas Bahl, Senior Advocate with
Mr.M.S.Batth, Advocate for the petitioner.

Mr.Kapil Aggarwal, Addl.A.G., Haryana.
Mr.S.S.Bhinder, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of instant petition filed under Section 482 of the Code of Criminal Procedure, seeks quashing of impugned complaint No.1016 dated 28.5.2013 under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act' for short) and under Section 420 of the Indian Penal Code and also the summoning order dated 28.5.2013 (Annexure P-3).

Notice of motion was issued and pursuant thereto, separate replies were filed by both the respondents, raising objections that since the petitioner has not availed her equally efficacious alternative remedy of revision against the impugned summoning order, she should be relegated to her alternative remedy , at the first instance.

Learned senior counsel for the petitioner submits that since the revisional court as well as this Court were having the concurrent

jurisdiction, petitioner has rightly filed the present petition, invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. In support of his contention, learned senior counsel for the petitioner places reliance on the following judgments:-

- 1. M/s Pepsi Foods Ltd. v. Special Judicial Magistrate, 1998(5) SCC 749;**
- 2. Tameeshwar Vaishnav v. Ramvishal Gupta, 2010 (2) SCC 329;**
- 3. M/s. Prem Chand Vijay Kumar v. Yash Pal Singh and another, 2005(4) SCC 417 and**
- 4. Dhariwal Tobacco Products Ltd. and others v. State of Maharashtra and another, 2009(2) SCC 370.**

He prays for allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for the complainant-respondent No.2 submit that once the petitioner has admittedly not availed her equally efficacious alternative remedy of revision against the impugned summoning order, present petition is not maintainable as such and the same may be dismissed.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

It is matter of record that an equally efficacious alternative remedy of revision against the impugned summoning order was available to the petitioner. It is also not in dispute that petitioner did not avail her alternative remedy of revision petition and that too without disclosing any compelling reasons, because of which she was unable to avail the alternative remedy of revision, at the first instance. In this view of the matter, it is held that although it is not an absolute rule that quashing petition under Section 482 Cr.P.C. would not be maintainable before this Court in every given fact situation, however, it is equally true that it is also not the general rule that despite the availability of a specific and equally efficacious alternative remedy against the impugned summoning order, this Court would entertain the quashing petition under Section 482 Cr.P.C., in routine, ignoring the material fact of non availing the alternative remedy by the petitioner.

So far as the judgments relied upon by the learned senior counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the petitioner, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**

An identical issue fell for consideration of this Court in **Mrs.Dipali Mittal and others v. Sicom Limited (CRM-M-34559-2013).**

After discussing entire case law on the subject, contentions raised on behalf of the petitioner were repelled by this Court vide order dated 10.9.2015, relegating the petitioners therein to avail their alternative remedy, at the first instance. Exactly similar is the fact situation in the present case.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **State of Punjab v. Davinder Pal Singh Bhullar and others, 2011 (14) SCC 770** and **Mohit alias Sonu and another v. State of U.P. and another, 2013 (7) SCC 789**, besides the earlier and later judgments of the Hon'ble Supreme Court as well as different High Courts, including this Court, referred in extenso in **Mrs.Dipali Mittal's** case (supra).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the petitioner could not make out an exceptional case for entertaining the present petition on her behalf, without availing equally efficacious alternative remedy of revision against the impugned summoning order, at the first instance, petitioner deserves to be relegated to her alternative remedy.

Consequently, instant petition is disposed of, relegating the petitioner to avail her equally efficacious alternative remedy of revision against the impugned summoning order, at the first instance.

Disposed of.

12.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE