IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRM No.M-13006 of 2016 (O&M)

Amit Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

(ii) CRM No.M-13822 of 2016 (O&M)

Amit Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

(iii) CRM No.M-13823 of 2016 (O&M)

Amit Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

(iv) CRM No.M-13824 of 2016 (O&M)

Amit Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

Date of decision: May 11, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Inderjit Sharma, Advocate
for the petitioner.

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INDERJIT SINGH, J.

All the above-mentioned cases are taken up together for decision as the point for the determination in all the cases is the same.

Petitioner Amit Kumar has filed all above-mentioned petitions under Section 482 Cr.P.C. for quashing of complaints filed by private respondents separately under Section 138 of the Negotiable Instruments Act and subsequent summoning orders passed by learned Chief Judicial Magistrate, Gurdaspur.

The facts are being taken from CRM No.M-13006 of 2016.

Roop Singh alias Rupa filed the complaint against Amit Kumar under Section 138 of the Negotiable Instruments Act. The complainant stated that he is a partner/proprietor of M/s Saini Rice and General Mill, which has been established by the complainant and other co-partners Gurdeep Singh and Harbans Singh. It is further stated that M/s Saini Rice and General Mill was established after getting loan facility from a Scheduled Bank and complainant along with his brother Harbans Singh and Rajinder Kaur wife of Gurdeep Singh being family member and one of the co-partner, stood as a guarantor. It is also in the complaint that complainant entered into an agreement for sale of the aforesaid industry along with all rights in favour of accused Amit Kumar for a consideration of ₹1 crore, out of which, part amount of consideration ₹78 lacs was issued in favour of the partners as well as the complainant. The accused took the possession of the said sheller on the date of agreement and undertook to clear all the liabilities. Total five cheques were issued at Gurdaspur in favour of the complainant and other partners having different dates.

The cheques amounting to ₹28 lacs were issued to complainant Roop Singh @ Rupa and two cheques of ₹25 lacs each to Harbans Singh and Rajinder Kaur, which on presentation for encashment, were returned back with the remarks 'Insufficient Amount'. Thereafter, legal notice was served upon the accused and when the amount was not paid, then the complaints were filed well within time.

At the time of arguments, learned counsel for the petitioner argued that no complaint under Section 138 of the Negotiable Instruments Act can be filed. Only civil proceedings i.e. suit for specific performance of the agreement is maintainable.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that there is no denial to the fact that agreement was executed and cheques were given by the present petitioner to the private respondents in all these cases, which on presentation, were dishonoured. The possession of the sheller was taken by the petitioner, as per facts mentioned in the complaint. In no way, dishonouring of the cheque can be held as dispute of civil nature. The private respondents have remedies by filing a suit for specific performance and also remedy under Section 138 of the Negotiable Instruments Act. In this case, there is nothing that agreement has been rescinded by the present petitioner due to some violation of the terms and conditions etc. or any notice to that extent has been issued to the private respondents. Neither the fact regarding issuance of the cheques nor agreement to sell have been contested before this Court. Therefore, in no way, it can be held that the cheques in question were not issued for any liability.

As regarding the complaint filed by Gurdeep Singh against Amit Kumar, the allegations are that accused Amit Kumar was in dire need of money and borrowed ₹5,80,000/- as friendly loan qua which, he issued cheque bearing No.030836 dated 14.09.2014 for ₹5,80,000/-. In the other complaints, there is mention regarding ₹5,80,000/- and cheque of ₹2 lacs and it is specifically mentioned in the complaints that this amount was also given by Amit Kumar. Otherwise also, even if it is taken as stated by the complainant that ₹5,80,000/- was borrowed by the accused and the cheque was issued for repaying that amount, even then, in no way, it can be held that complaint is not maintainable under Section 138 of the Negotiable Instruments Act. This is finding of fact, which is to be given by the trial Court on the basis of evidence whether this cheque of ₹5,80,000/- was issued in the same transaction regarding purchase of the sheller etc. or it was an independent loan transaction.

Furthermore, all these facts are to be determined by the trial Court when the parties will produce the evidence. At this stage, there is nothing to show that filing of the complaints amounts to abuse of process of law or amounts to miscarriage of justice.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Karnataka High Court in ***Venkatesh Bhat vs. Rohidas Shenoy, 2010(3) RCR (Criminal) 107***. I have gone through the above-cited judgment and the same having distinguished facts will not apply in the present case as in that case, the accused rescinded the agreement and informed the complainant not to present the cheque to bank for encashment, which are not the facts in the present cases.

Therefore, finding no merit in all the petitions, the same are dismissed.

May 11, 2016 **(INDERJIT SINGH)**
Vgulati **JUDGE**