

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM NO. M-18452 of 2016  
DECIDED ON : MAY 26, 2016

NARESH KUMAR & ANR.

....PETITIONERS

VERSUS

VIJAY DEVI

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Pardeep Sharma, Advocate,  
for the petitioners.

**JASPAL SINGH, J**

By virtue of this petition preferred under Section 482 Cr.P.C, petitioners has sought quashing of complaint under Section 138 of Negotiable Instrument Act, 1881 (for brevity 'Act') captioned as ***“Vijay Devi vs. Shiv Shakti Enterprises and another”***, bearing No. 459 of 2015, filing No. 4643 of 2015 dated October 20, 2015 pending before learned Additional Chief Judicial Magistrate, Jind as well as summoning order dated November 18, 2015 (Annexure P-3).

2. The facts giving rise to the instant petition are that complaint referred to above was preferred by respondent alleging that in the month of July 2015, petitioner No.1 requested her (complainant) for financial assistance to the tune of

₹30,00,000/-. To secure the repayment of the said amount the cheque bearing No. 000038 dated 24.08.2015 was issued for a sum of ₹30,00,000/- drawn on Bank of Baroda, Kalwar Road, Jaipur in favour of respondent but the same has been received back unpaid with an endorsement "funds insufficient". Thereafter, respondent served legal notice dated September 15, 2015 upon petitioner No.1. But neither the amount was returned nor any response was given to the said notice by the petitioner No.1, which necessitated the filing of above-referred complaint.

3. On the strength of preliminary evidence, petitioner No.1 has been summoned to face trial under Section 138 of the Act vide order dated November 18, 2015.

4. Feeling disheartened against the summoning order, instant petition has been preferred.

5. Learned counsel for the petitioner(s) submits that the above-referred complaint is nothing but a counter blast of FIR No. 490 dated June 05, 2015, which was got registered by petitioner No.1 against the respondent at Police Station Vaishali Nagar, District Jaipur (South) under Sections 384, 386 and 389 IPC by exercising constant threats to his life. He further submits that the true facts are that petitioner No.1 received regular calls from the respondent and she used to insist him to develop friendship with her for which he refused. Ultimately, he felt very disturbed due to the afore-said calls and just to pacify her, he agreed to her proposal. Thereafter, after about one month respondent alongwith her parents and maternal aunt visited the house of petitioner No.1 on the pretext that they have to go Mehndipur Balaji for worship and at that time they stayed for two days in his flat, who also managed their hospitality. At that time, petitioner No.1 was not

aware about the malafide intention of respondent that she was intending to make physical relations with him. On return from Jaipur respondent made phone call to petitioner No.1 and extended threats to him that he should solemnized marriage with her otherwise, she will involve him in a false criminal case. He succumbed to her unlawful demand for money raised by her. Under pressure petitioner No.1 went to Jind where a demand for ₹15,00,000/- was raised by respondent and her friend Manisha when he showed inability to pay such a huge amount. She threatened him to implicate in a false case. At that time he paid a sum of ₹2,00,000/- to the respondent and her friend Manisha. Even, she also obtained four signed blank cheques from him. The demand of money was raised number of time, which was paid by him to the respondent which have been detailed in para 3 of the petition. Moreover, no source of income has been explained by the respondent while lodging the complaint as to how she arranged such a huge amount for advancing the same as loan to the petitioner(s). Thus, summoning order which has passed in a routine manner is not sustainable in the eyes of law and the complaint as well as summoning order are liable to be quashed.

6. This Court has given an anxious thought to the submissions made by learned counsel for the petitioner(s) and has carefully scrutinized the summoning order.

7. At the very outset, it would be pertinent to mention that all the pleas taken in the petition are a matter of evidence and cannot be taken as a gospel truth at this stage. Moreover, there is no such story which has been unfolded in the instant petition before learned trial Court when it passed the summoning order.

The summoning order has been passed on the basis of preliminary evidence, in the

shape of oral as well as documentary evidence, adduced by the respondent. It is an undisputed fact that cheque(s) in question bear(s) the signatures of the petitioner(s) which as per the version of the respondent has been issued in the discharge of their legal liability. It is also *prima facie* proved on record that when the cheque was presented for encashment in the bank it, was dishonoured and received back unpaid with the remarks “funds insufficient”. Accordingly, respondent served a legal notice upon petitioner(s) as required under law. When the amount was not paid within the prescribed period, a complaint was filed. Even, on finding a *prima facie* case, petitioner(s) has been summoned to face trial under Section 138 of the Act vide impugned order dated November 18, 2015.

8. There is no infirmity or illegality in the impugned order, which call for any interference by this Court. Moreover, it cannot be said that from the allegations unfolded in the complaint, no offence is made out or that the allegations are false or ground less. As far as the pleas taken in the petition are concerned those are matter of evidence and can be termed a defence to be taken by petitioner(s) during proceedings before trial Court. No ground is made out for quashing either the complaint or the summoning order.

9. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same stands dismissed.

MAY 26, 2016  
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(JASPAL SINGH)  
JUDGE