

Criminal Miscellaneous No.M-29397 of 2014 (O & M)

Date of Decision: *December 16, 2016*

Jasbir Kaur

..... PETITIONER

VERSUS

State of Punjab & another

..... RESPONDENTS

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: Mr. Peeush Gagneja, Advocate, for the petitioner.

Mr. G.S. Khandewad, Deputy Advocate General, Punjab for
respondent No.1 – State.

Mr. H.P.S. Ghuman, Advocate, for respondent No.2.

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Jaspal Singh, J

1. The instant petition has been preferred by Jasbir Kaur under Section 482 Cr.P.C. seeking quashing of FIR No.239 dated October 22, 2012 under Section 420 IPC, registered at Police Station, City Abohar, District Fazilka as well as charge-sheet dated October 10, 2013 and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the instant FIR, lodged at the instance of respondent No.2 – complainant, is in counter blast to the proceedings initiated by the petitioner against respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act'). Petitioner is a widow lady. Respondent No.2 is sister-in-law

(Nanad) of petitioner. In the year 2011, respondent No.2 – complainant borrowed a sum of ₹ 5 lac from petitioner for construction of her house. Respondent No.2 issued two cheques to petitioner and assured her that she can get them encashed if respondent No.2 fails to repay the money. After few months, respondent No.2 refused to repay the debt and threatened her that she would get her involved in false cases. Petitioner presented the said cheques but they were dishonoured. Petitioner pursued her remedy under Section 138 of the Act by filing a complaint dated April 16, 2012, whereafter, respondent No.2 – complainant was summoned vide order dated April 16, 2012.

3. Learned counsel for the petitioner has further contended that on October 22, 2012, respondent No.2, in connivance with police officials got registered the instant FIR under Section 420 against the petitioner, involving the same cheques which are subject matter of the complaint under Section 138 of the Act.

4. Learned counsel for the petitioner has contended that the trial court has miserably failed to appreciate the fact that cheques which are being made the basis of instant FIR, are already subject matter of litigation under Section 138 of the Act. The cheques are dated November 11, 2011 and December 11, 2011, respectively, for an amount of ₹ 2,50,000/- each. The complaint under Section 138 of the Act was filed on April 16, 2012 and impugned FIR was registered on October 22, 2012 i.e. after six months of filing of complaint. As such, the FIR is a counter-blast to the earlier proceedings initiated by the

petitioner against respondent No.2 under Section 138 of the Act. The trial court has also ignored the fact that there is a considerable delay in lodging the FIR. There are contradictions in the statement of respondent No.2 – complainant in the FIR and statement given by her under Section 313 Cr.P.C. in the complaint case. There are also contradictions of statements of respondent No.2 and Sukhdev Singh regarding handing over the cheques given by Sukhdev Singh to petitioner. The FIR has been filed is abuse of process of law. As such, the impugned FIR, charge-sheet as well as all subsequent proceedings against the petitioner be quashed.

5. The petition has been opposed by respondent No.1 – State by filing reply by way of affidavit of Gurbhej Singh, DSP, Sub Division, Abohar, District Fazilka wherein it has been submitted that FIR in question was lodged on the complaint of respondent No.2 – complainant, Gurdeep Kaur. During investigation, it was found that petitioner misappropriated the cheques, which were handed over to her by Sukhdev Singh to be given to respondent No.2. The same were not given by respondent No.2 in discharge of any legal liability.

6. During investigation, it was revealed that Rinku (complainant's son) and Sukhdev Singh started a business of All India Transport near Dada Motors, Malout Road, Abohar. Sukhdev Singh also acted as middleman for Rinku for his marriage. Father-in-law of Rinku wanted to give him a motor cycle but they thought that after arranging some more money, they may get a car financed, whereafter,

vehicle. In the year 2011, business of complainant's son and Sukhdev Singh was closed due to loss. Thereafter, Sukhdev Singh gave those cheques and papers to petitioner (Bhabhi of respondent No.2 – complainant) for handing over the same to Gurdeep Kaur. All the cheques were blank. During investigation, it has come to light that instead of handing over the cheques to Gurdeep Kaur, petitioner kept them with her and after filling the amount in the cheques, presented the same in the bank and got the same dishonoured and filed a complaint under Section 138 of the Act against Gurdeep Kaur. Final report under Section 173(2) has been presented and charge was framed on October 10, 2013 against the petitioner.

7. Respondent No.2 – complainant has also filed reply by way of affidavit submitting that petitioner also filed a similar petition viz. Criminal Miscellaneous No.M-3652 of 2014 seeking quashing of FIR. The petition was dismissed as withdrawn with liberty to the petitioner to avail alternative remedy to challenge the order vide which charges were framed. Though, order dated October 10, 2013 regarding framing of charge against the petitioner is revisable, but the petitioner has not challenged the same in a revision petition. The alleged cheques were given by Sukhdev Singh to petitioner to be given to respondent No.2 – complainant but petitioner has misused the cheques. There is no reference of any transaction regarding the advancement of loan. Even in the complaint under Section 138 of the Act, there is no date mentioned on which the loan was advanced. In the absence of mentioning the date of advancement of loan, prosecution against

respondent No.2 is not legally sustainable. Petitioner only stated that loan was advanced in the month of April 2011. If the cheques were issued in the month of April 2011, the dates of April 2011 would have been mentioned on the cheques, whereas, the dates mentioned on the cheques were of November 2011 and December 2011.

8. It has been submitted by learned counsel for respondent No.2 – complainant that after receiving the summons in the complaint under Section 138 of the Act, respondent No.2 came to know about the misuse of cheques on May 9, 2012, whereupon she made a complaint to DSP, Abohar against Sukhdev Singh, his son and petitioner Jasbir Kaur. The matter was investigated and registration of FIR was recommended against the petitioner only. There are no contradictions in the statements of respondent No.2 in FIR and her statement recorded under Section 313 Cr.P.C. in complaint case. As such, the instant petition deserves to be dismissed.

9. This court has given a deep thought to the rival submissions made by learned counsel for the parties and gone through the record available.

10. Admittedly, final report under Section 173(2) Cr.P.C. has been presented in the court of jurisdictional Magistrate and charge has been framed against the petitioner on October 10, 2013. During investigation, it has come to light that petitioner misappropriated the cheques given to her by Sukhdev Singh for handing over the same to respondent No.2 – complainant. During investigation, it has revealed that instead of giving the alleged cheques to respondent No.2, petitioner

kept them with herself and after filling the amount in the cheques, she presented the same, got them dishonoured and filed a complaint under Section 138 of the Act. There is no mention of any date on which the amount of ₹ 5 lac was given by the petitioner to respondent No.2. The petitioner has stated that loan was advanced in the month of April 2011 and respondent No.2 issued the cheques on the same day, whereas, cheque No.004682 is of November 11, 2011 for ₹ 2,50,000/- and cheque No.004681 is of December 11, 2011 for ₹ 2,50,000/-. If the version of petitioner is taken to be true that cheques were issued on the same day, then the alleged cheques would have been issued in the month of April 2011 whereas dates mentioned on the cheques are November 11, 2011 and December 12, 2011. Furthermore, in order to pay off the debt, one cheque would have been sufficient and there would have been no occasion to issue two cheques. Issuance of cheques, in the manner, mentioned in the complaint, does not satisfy the legal parameters. This fact creates a doubt about the authenticity of the story of petitioner and supports the FIR version.

11. As far as delay in lodging the FIR is concerned, respondent No.2 came to know about the misuse of cheques on May 9, 2012 and she made a complaint to DSP Abohar against Sukhdev Singh, his son and petitioner Jasbir Kaur. Accordingly, instant FIR was registered against the petitioner on October 25, 2012. There was no delay on the part of respondent No.2 in lodging the complaint to the

police. Thus, there is no cogent and convincing ground to quash the FIR.

12. In the light of what has been discussed above, there is no merit in the instant petition and the same is accordingly dismissed.

December 16, 2016
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(Jaspal Singh)
Judge

Whether Speaking or Non-speaking
Whether Reportable or not

: Yes/No
: Yes/No