

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-36500 of 2015 (O&M)
Date of Decision: February 27, 2016

Apvinderjit Singh Sandhu

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vishal Mittal, Advocate
for the petitioner.

Mr.Sidakmeet Sandhu, Deputy Advocate General, Punjab
for the respondent-State.

Mr.Jaswinder Singh, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C.
for quashing of complaint No.119 of 05.06.2012 under Section 138 of
the Negotiable Instruments Act, summoning order dated 10.02.2015
and all subsequent proceedings arising out thereto.

Notice of motion was issued and learned State counsel as
well as learned counsel for respondent No.2 appeared and contested
the petition.

I have heard learned counsel for the parties as well as
learned State counsel and have gone through the record.

From the record, I find that in the present case,
complainant Gurpreet Singh filed the complaint against Apvinderjit
Singh under Section 138 of the Negotiable Instruments Act. It is the

case of the complainant that accused and complainant were known to each other. Accused borrowed a sum of ₹17,50,000/- on 03.06.2010 from the complainant and agreed to return the same within two months. After repeated requests and demands of the complainant and in order to discharge the legal liability, on dated 17.02.2012 accused issued a cheque bearing No.035377 dated 17.04.2012 of ₹17,50,000/-. The cheque was presented for encashment and it was dishonoured with the remarks 'Funds Insufficient'. Legal notice was served upon the accused. When the payment was not made then the complaint was filed.

Learned counsel for the petitioner argued that the petitioner came to India on 05.04.2012. He went to Fiji on 20.09.2011 and came back on 05.04.2012. The FIR was already registered against the complainant regarding the fraud etc. and the present complaint has been filed as a counter blast. The copy of the FIR is also placed on record as Annexure P-2. This FIR is bearing No.87 dated 01.06.2013 whereas it is stated that the complaint has been filed later on as counter blast. The main argument of learned counsel for the petitioner is that the complaint in question is counter blast to the FIR and further the petitioner was not in India, when the cheque is stated to have been issued.

On the other hand, learned counsel for private respondent argued that fact regarding counter blast is to be determined by the trial Court on the basis of the evidence produce before it by the parties. As regarding the date, admittedly the cheque is dated

17.04.2012 and it is nowhere stated in the complaint that it is a post dated cheque. The date 17.02.2012 might have been inadvertently written in the complaint. All these facts are to be explained during the evidence and the trial Court will determine all these facts whether the cheque has been genuinely issued in discharge of pre-existing liability or not.

From the record, I find that the fact that whether this complaint is counter blast to the FIR or not or whether the cheque has been prepared by way fraud or is genuine one or whether it has been given on 17.04.2012 or on 17.02.2012 or the date in the complaint has been written inadvertently as 17.02.2012 instead of 17.04.2012 etc. are to be determined by the trial Court on the basis of the evidence. At this stage, without evidence, this Court cannot give the finding of fact.

Furthermore, in the present case, the summoning order has already been passed but the petitioner has not availed remedy available to him for setting aside the summoning order by way of filing revision petition.

In view of the above discussion, I find that at this stage, the complaint filed by complainant-respondent cannot be quashed. In no way, it can be held at this stage that the filing of the complaint is abuse of process of law or amounts to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

February 27, 2016

Vgulati

**(INDERJIT SINGH)
JUDGE**