

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No. M-8223 of 2015
DECIDED ON : OCTOBER 20, 2016

SANJEEV KUMAR MALIK

....PETITIONER

VERSUS

MS. ANUPAMA SINGH

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Jitender Dhanda, Advocate,
for the petitioner.

Mr. Ajay K. Kansal, Advocate
for the respondent.

JASPAL SINGH, J

By virtue of instant petition preferred under Section 482 Cr.P.C., petitioner has sought the quashing of complaint No. 110-2 of 09.05.2011 (Annexure P-4) captioned as **Ms. Anupama Singh vs. Sanjeev Kumar Malik;** as well as all the consequential proceedings arising therefrom.

The contention of learned counsel for the petitioner is that the main allegation contained in the complaint is that petitioner has issued two cheques amounting to ₹22,40,000/- in favour of respondent bearing cheque Nos. 47127 and 47128, dated September 30, 2010. However, on presentation in the bank for clearance the same were returned with the remarks "Account Number Invalid".

When the petitioner received a notice under Section 138 of Negotiable Instrument

Act, 1881 (for short 'Act') through her counsel, he immediately contacted Anupama Singh-respondent and her husband Jaswant Singh who asked the petitioner to contact Surajmal Mann, father of the complainant Anupama Singh. Then he contacted Surajmal Mann on April 03, 2011 and a settlement was arrived at in between them, which was reduced into writing on April 03, 2011, whereby, it has been settled that an amount of ₹40,00,000/- will be given by the petitioner to the complainant, as full and final payment against the outstanding amount of ₹37,25,000/-. In pursuance of the above-said settlement, petitioner has already paid an amount of ₹10,00,000/0 in cash to Surajmal Mann and subsequent thereto, a sum of ₹18,00,000/- was paid by him to Surajmal Mann vide two demand drafts of ₹9,00,000/- each and at that time ₹2,00,000/- was also given to Surajmal Mann.

Thus, despite receipt of more than ₹22,40,000/-, the complainant is still being prosecuted by respondent, which is an abuse of process he law. If a person receives the cheque amount in pursuance of notice under Section 138 of the Act, no offence under Section 138 of the Act is attracted.

On the other hand, learned counsel for respondent has submitted that the cheque amount has not so far been paid by the petitioner. As such, it cannot be said that the offence under Section 138 of the Act is not maintainable. Moreover, at this stage, it also cannot be said that from the allegations contained in the complaint that no offence under Section 138 of the Act is made out, especially in the circumstances that the cheque is admitted to have been issued by the petitioner, which on presentation stood dishonoured. Moreover, arriving at any settlement/compromise is a matter of evidence, which cannot be relied upon for quashing the complaint.

This Court has given a deep thought to the rival submissions made by

learned counsel for the parties but does not find any legal and factual substance in the submissions made by learned counsel for the petitioner.

By now, it is pretty settled that the power to quash a criminal proceedings should be exercised very sparingly and with circumspection that too, in the rarest of rare cases. The extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act accordingly to its whim or caprice. To confirm the reliability and genuineness of the allegations made in the FIR or complaint, the Court will not be justified in embarking upon an inquiry.

This Court has scrutinized the allegations contained in the complaint, which disclose the *prima facie* commission of offence under Section 138 of the Act. Thus no view can be expressed that the allegations made in the complaint, even, they are taken at their face value and accepted in their entirety do not constitute any offence or make out the case against the accused. Moreover, the agreement or the receipt if any, alleged to have been issued by the attorney holder of the complainant are matter of evidence and cannot be made the basis for quashing of the complaint in question.

There is also nothing on record to suggest that the complaint is manifestly attended with malafide and/or the complaint has been maliciously instituted. Thus, this Court does not find any merit in the instant petition.

In the light of what has been discussed above, instant petition being devoid of merit, is dismissed.

OCTOBER 20, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No