

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-7489 of 2016

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Date of decision:1.3.2016

Sanjay Virmani

...Petitioner

v.

State of Haryana and another

...Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Pallavi Singh, Advocate for the petitioner.

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Inderjit Singh, J.

This criminal miscellaneous petition has been filed by petitioner under Section 482 Cr.P.C. for quashing and setting aside the order dated 17.2.2016 (Annexure-P.1) passed by learned Additional Sessions Judge at Faridabad in criminal revision No.291 of 2015 and order dated 3.1.2015 (Annexure-P.2) passed by learned Judicial Magistrate Ist Class, Faridabad taking cognizance and all consequent proceedings arising out of the same.

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

From the record, I find that private respondent-M/s Compuage Infocom Ltd. has filed a complaint against the present petitioner-Sanjay

Virmani and on the basis of the preliminary evidence, the learned Judicial Magistrate Ist Class, Faridabad, summoned the accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') vide order dated 3.1.2015. The complaint has been filed by the complainant against the accused with the averments that the accused in discharge of his existing liability towards the complainant issued cheque bearing No.594488 dated 27.8.2012 for ₹12,35,007/- drawn on Corporation Bank, Faridabad. The complainant presented the said cheque for encashment, but the same was dishonoured with the remarks "effects not cleared". A legal notice was issued to the accused, but despite legal notice the accused/petitioner did not honour the cheque amount and hence the present complaint was filed.

In order to substantiate the allegation of the complainant, the complainant besides tendering its affidavit, has also tendered the documents Ex.CW.1/1 to Ex.CW.1/6. The Court below also considered that in the present case, the complainant has presented the cheque for collection within three months of its issuance and after receipt of information regarding dishonour of the cheque, he sent a legal notice within time and the present complaint has been filed within time. Against this summoning order, the accused/petitioner filed criminal revision petition before the Sessions Court and the learned Additional Sessions Judge, Faridabad, vide detailed order dated 17.2.2016 dismissed the revision petition. Now the present petitioner has filed this petition for quashing both these orders.

Learned counsel for the petitioner argued that the notice has not

been sent on the correct address and there is no pre-existing liability for the cheque in question. Therefore, she argued that the summoning order as well as the order passed by the revisional Court are against the law.

From the record, I find that the summoning order has been issued by the Court on the basis of preliminary evidence. The version given by the present petitioner/accused that the legal notice was not sent on the correct address or there was no pre-existing liability etc. are to be determined on the basis of evidence produced before the learned trial Court. While passing the summoning order, the Court is only to see whether there are sufficient grounds to proceed further or not. From the averments in the complaint as well as from the preliminary evidence, the Court reached to the conclusion that there are sufficient ground to proceed further against the accused. The learned Additional Sessions Judge in the revision petition also has passed the order as per law. No illegality has been committed by the Courts below.

From the record, I find that the petitioner has already availed the remedy against the summoning order by way of revision petition and this is a petition under Section 482 Cr.P.C. From the record, I do not find any illegality on the face of it and the passing of the orders by the Courts below, in no way, amount to miscarriage of justice.

Learned counsel for the petitioner has placed reliance on the judgment of this Court in M/s Ajaya Industries v. Gulshan Rai Malhotra, 2014(1) R.C.R.(Cr.) 533. I have gone through the judgment relied upon by the learned counsel. These findings have been given while deciding the

appeal on the basis of evidence in that case. Therefore, this judgment will not apply in the present case having distinguished facts.

Learned counsel for the petitioner placed reliance on the judgment of this Court in Ramkaran Meena v. Indo Farm Industries Limited, 2013(1) Law Herald 518 and of Hon'ble Supreme Court in M/s Harman Electronics (P) Ltd. and another v. M/s National Panasonic India Ltd., 2009 (1) R.C.R. (Cr.) 458 and of Delhi High Court in HDFC Bank Ltd. v. Amit Kumar Singh, 2009(4) Crimes 772. I have gone through the law laid down in all these judgments. These judgments having distinguished facts will not apply in the present case. In the present case, as already discussed, whether the legal notice has not been served on the correct address etc. is to be seen only when the evidence is produced before the trial Court by both the parties. At this stage, there are sufficient grounds for summoning the accused and to proceed further against the accused/petitioner.

Therefore, from the above discussion, I find that no ground is made out for quashing the summoning order as well as the revisional order.

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

March 1, 2016.

(Inderjit Singh)
Judge

hsp