IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-24132 of 2015
Date of Decision:24.11.2017

Roshan Lal Jalota ....Petitioner

V/S

Mohini Devi and another ....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.B.D.Sharma, Advocate for the petitioner.

None for respondent No.1.

Mr.Simranjeet Kaur, AAG, Punjab.

***

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of Criminal Complaint No.3110 of 2014 instituted on 10.11.2014, titled as *"Mohini Devi Vs. Roshan Lal Jalota"* and the summoning order dated 09.01.2015 (Annexure P-2) passed by the learned Judicial Magistrate, Ist Class, Jalandhar, whereby the petitioner has been summoned to face trial under Section 138 of the Negotiable Instruments Act (for brevity "the Act").

Before referring to the facts it is worth noticing here that notice of motion was issued in this case on 27.07.2015 and thereafter respondent No.1 appeared and had sought time on 31.10.2015. However, in the intervening period none appeared for respondent No.1 and no reply has been filed. Vide order dated 16.08.2016, the proceedings before the learned trial Court were stayed. On the last date of hearing i.e.09.08.2017, Registry was directed to intimate counsel for respondent No.1 for today.

Since this matter is pending from the year 2015, the case is heard on merits. Learned counsel for the petitioner submits that on an earlier occasion, vide compromise dated 07.02.2010(Annexure P-6), it was settled that the petitioner has to pay an amount of Rs.4, 40,000/- during pendency of a complaint pending in the Court of Judicial Magistrate, Jagadhri. As per this compromise, an amount of Rs. 1,00,000/- was paid in the presence of the witnesses to the second party and four cheques for a sum of Rs.10,000/- each were also given to the second party which according to learned counsel for the petitioner have been cleared and for the payment of balance amount of Rs. 2,65,000/-, it was agreed that the petitioner will pay the same in installments by way of depositing an amount of Rs. 4,000/- to 6,000/- per month in the bank account of the respondent/complainant-Mohini Devi. It was also agreed that disputed cheque No.298000 was also handed over by the petitioner to the respondent/complainant as a security cheque for ensuring the payment of aforesaid balance amount of Rs. 2,65,000/-.

Counsel for the petitioner further submits that since then petitioner is regularly depositing an amount of Rs.4,000/- per month and as on today, he has cleared the aforesaid remaining amount of Rs.2,65,000/-. The petitioner has attached the receipts collectively starting form 20.07.2010 onwards up to date of the filing of the petition as Annexure P-10. It is further submitted that even subsequently the amount has been deposited and cleared.

Counsel for the petitioner further submits that the respondent/complainant deposited the aforesaid cheque in his bank account and the same was returned with an endorsement *"insufficient funds"*. Thereafter the respondent-complainant issued a registered notice dated 25.03.2013 alleging that an amount of Rs.1, 60,000/- is outstanding and when the cheque was presented in lieu of the same, it was dishonored by the bank. It is further submitted that a reply to this notice (Annexure P-4) dated 09.04.2013 was sent giving all the details of the compromise and further clarifying that the aforesaid cheque was in fact was given as a security so that the total amount is cleared by way of installments of Rs.4,000/-. The cheque was to be retained as security by the complainant. It is further submitted that the complainant, through her counsel had given counter reply to the legal notice admitting all the facts regarding the compromise and stated that since the aforesaid cheque, as per the RBI guidelines has become a stale cheque, so the petitioner should replace the said cheque by way of giving a fresh cheque. It is only thereafter that the impugned complaint (Annexure P-1) was filed by the respondent-complainant. The complainant, herself examined as CW-1 and thereafter vide impugned order dated 09.01.2015, the trial Court summoned the petitioner to face trial under Section 138 of the NI Act.

Counsel for the petitioner has challenged the impugned complaint and the summoning order on the ground that from a bare perusal of the complaint dated 10.11.2014 (Annexure P-1), it is apparent that the complainant has intentionally concealed the factum of earlier complaint in which compromise (Annexure P-6) was entered into between the parties. It has also been concealed that in pursuance to the compromise, the petitioner had made part payment and for the remaining amount Rs.2,65,000/-, the petitioner has agreed to pay the said amount by way of installments of Rs.4,000/- per month. It is clearly mentioned in compromise that cheque No.298000 was given by the petitioner as a security cheque for the said amount, which is being paid in installments @ Rs.4,000/- per month. It is, thus, submitted that the petitioner by concealing all the facts have filed the complaint. It is further submitted that only demand made in the counter reply to the notice was that the petitioner should give a fresh cheque as per the RBI guidelines, as the aforesaid cheque has become obsolete and thus by concealing all these facts, the complainant has filed the complaint. It is next submitted on behalf of the petitioner that admittedly the cheque was given as a security cheque and even subsequent to the dishonor of the cheque, the respondent-complainant was receiving the amount by way of installments of Rs.4,000/- per month and till date entire amount has been paid. Counsel for the petitioner has further submitted that since filing of the present petition before this Court, respondent-complainant has not opted to file any reply to rebut the factum of payment of the balance amount of Rs.2, 60,000/- by way of installments and thus as on date, nothing is pending against the petitioner. It is also submitted on behalf of the petitioner that the presentation of the cheque in the bank, in fact was a mala fide action on the part of the complainant, as the petitioner has no intention, not to make the payment in terms of the compromise to which the complainant has herself agreed to receive said amount by way of installments of Rs.4,000/- per month. Thus, there was no occasion to present the cheque in the bank.

At the cost of repetition, it may be noticed that no one has come on behalf of the respondent-complainant despite issuance of a notice and no reply has yet been filed to contest petition.

Counsel for the petitioner has further placed reliance judgment of this Court in the case of ***Ms. Singh Finance Vs. Davinder Singh,*** *2011(6) R.C.R. (Criminal) 1321,* wherein this Court had held that where it is admitted between the parties that a cheque has been given as a security, the offence under Section 138/142 of the N.I. Act is not made out as it is not in lieu of any admitted liability.

After hearing learned counsel for the parties, I find merit in the present petition.

Admittedly, when the first complaint was filed, there was compromise between the parties and to clear the outstanding amount of Rs.4,40,000/- the petitioner has paid part amount and amount of Rs.2,65,000/- was balance for which it was agreed that the petitioner will pay the said amount by way of installments of Rs.4,000/- per month. The petitioner has attached the bank receipts Annexure P-10 collectively to show that the petitioner has been depositing the amount since 20.07.2010 the terms of this agreement which is not disputed by the respondent-complainant, the disputed cheque No.298000 was handed over to the complainant as a security cheque for ensuring payment of the balance amount. It is also admitted fact that when the cheque was presented before the bank, the complainant issued a notice (Annexure P-3) in which the factum of compromise was completely concealed and instead of giving proper details, it was mentioned that an amount of Rs.1,60,000/- was outstanding against the petitioner for which the aforesaid cheque was issued. When the petitioner filed a reply (Annexure P-4) and gave all the details of the compromise, in the counter reply (Annexure P-11), the respondent-complainant has not denied the compromise and has only stated that as per the RBI guidelines, the petitioner should clear the amount and issue a fresh cheque. A perusal of the impugned complaint (Annexure P-1) shows that all these facts were concealed by the complainant and even this has also been concealed that as per the compromise the cheque was issued as a security cheque.

A perusal of the summoning order (Annexure P-2) also shows that the documents relied upon by the complainant Ex.C1 to C9 are power of attorney, original cheque, bank memo, copy of legal notice, postal receipts, reply to the legal notice, original postal receipts of counter reply. However, the counter reply was not at all taken into consideration while passing the impugned order dated 09.01.2015.

Since there is no representation on behalf of the respondent-complainant and no reply has been filed to rebut the allegations in the petition regarding the payment made by way of installments, I hold that cheque No.298000 was issued as a security cheque and the respondent-complainant could have filed the impugned complaint only in case when the petitioner has failed to discharge his liability of payment of balance amount. In view of the judgment of this Court in ***Ms. Singh Finance(Supra)*** and also in view of the fact that the petitioner has represented that he has cleared the entire amount of Rs. 2, 65,000/-, I find merit in the present petition and the same is allowed. Accordingly, Criminal Complaint No.3110 of 2014 instituted on 10.11.2014, titled as *"Mohini Devi Vs. Roshan Lal Jalota"* and the summoning order dated 09.01.2015 (Annexure P-2) passed by the learned Judicial Magistrate, Ist Class, Jalandhar are ordered to be quashed.

(ARVIND SINGH SANGWAN)
JUDGE

24.11.2017
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No