

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-37217-2016

Date of Decision: 25.09.2017

Kamlesh Chandra Sharma and another

.. Petitioners

Versus

State of Haryana and another

..Respondents

CORAM:- HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

Present: Mr. S.N. Sharma, Advocate
for the petitioners.

Mr. Sandeep Vashisht, DAG, Haryana.

Mr. Bipin Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate,
for respondent No. 2.

MAHABIR SINGH SINDHU, J. (Oral)

Petitioners have filed the present petition for quashing of complaint No. 461 dated 01.07.2016 (Annexure P1) as well as impugned summoning order dated 03.09.2016 (Annexures P2), passed by learned Chief Judicial Magistrate, Kurukshetra, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act of 1881')

2. It is contended by the learned counsel for the petitioners that the impugned summoning order is not legally sustainable in view of the fact that the cheque in question was issued in lieu of the “security” and not for discharging the “legally enforceable debt”. Reliance in this regard is placed on the judgments of Hon'ble the Supreme Court in case of 'M.S. Narayana

Menon Alias Mani Vs. State of Kerala and another, (2006)6 SCC 39 and Krishna Janardhan Bhat Vs. Dattatraya G Hegde, 2008(4) SCC 54.

Learned counsel further contended that in view of the consideration amounts reflected in the sale deeds, it cannot be presumed that the cheque in question was issued for discharging the “legally enforceable debt” as the amount of ₹1,00,80,000/- as shown in cheque No. 868086 dated 20.05.2016 does not commensurate with the consideration of the sale deeds.

3. On the other hand, learned Sr. counsel for respondent No. 2 has opposed the submissions made by learned counsel for the petitioners on the ground that the impugned summoning order has been passed by the learned trial Court after taking into consideration the allegations levelled in the complaint as well as the material brought on record by way of preliminary evidence. He has further contended that while entertaining the present petition under Section 482 Cr.P.C., this Court should not go into the disputed questions of fact as to whether the cheque in question was issued for the purpose of “security” or for “legally enforceable debt” and in support thereof, he has relied upon the judgment of Hon'ble the Supreme Court in the case of **'HMT Watches Ltd. Vs. M.A. Abida and another, (2015) 11, SCC, 776'**.

4. Heard learned counsel for the parties and perused the paper book.

5. Perusal of the impugned order reveals that at the time of recording the preliminary evidence, respondent No.2-complainant was examined as PW1 and tendered his affidavit alongwith other documents i.e. Ex. C1 to Ex. C9.

6. Learned trial Court, after taking into consideration the contents

of the complaint coupled with materials brought on record by way of the preliminary evidence, found that *prima facie* a case punishable under Section 138 of the Act of 1881 is made out against the petitioners. The trial in this case is yet to start and both the parties can lead their respective evidence as per law. Thus, at this stage, evaluation of the material available on record and adjudication of the disputed questions of fact without affording the opportunity of hearing to the complainant to lead his entire evidence will scuttle the trial in the midway.

7. There is no doubt with regard to the legal proposition that it is obligatory for the complainant to prove the “legally enforceable debt” to bring the case within the parameters of Section 138 of the Act of 1881; but that is to be seen after conclusion of the trial and not at this stage. The judgments cited by learned counsel for the petitioners are not helpful to his case for the simple reason that in both the cases i.e. **Narayana Menon Alias Mani and Krishna Janardhan Bhat (supra)**, summoning order(s) was not challenge; rather conviction recorded by the learned trial Court(s) after concluding the trial in these cases under Section 138 of the “Act of 1881” were challenged and in that process the matter went up to Hon'ble Supreme Court and in those circumstances, the Hon'ble Supreme Court set aside the conviction on the ground that the complainant(s) failed to prove the requirement of “legally enforceable debt” and resultantly, the accused were acquitted of the charges under Section 138 of the Act of 1881.

8. In the present case the factual situation is entirely different as the trial is pending and both the parties will be at liberty to lead their respective evidence and after that only, the learned trial Court will record findings in one way or the other and in this regard, this Court finds support

from the judgment cited by learned counsel for respondent No.2 in the case of *HMT Watches (Supra)*. In that case also the proceedings in a criminal complaint pertaining to offence punishable under Section 138 of the Act of 1881 were quashed by the High Court of Kerala in a petition under Section 482 Cr.P.C.; but the Hon'ble Supreme Court set aside the same and held that "High Court exceeded its jurisdiction by giving its opinion on disputed question of fact before the learned trial Court" and reference can be made to Para No.15 of the 'HMT Watches Ltd.' case (supra) which reads as under:-

"For the reasons as discussed above, we find that the High Court has committed grave error of law in quashing the criminal complaints filed by the appellant in respect of the offence punishable under Section 138 of the NI Act, in exercise of powers under Section 482 of the Code of Criminal Procedure by accepting factual defences of the accused which were disputed ones. Such defences, if taken before the trial court, after recording of the evidence, can be better appreciated.

9. The contention of the petitioners that the amount shown in the cheque does not commensurate with the sale consideration as reflected in the sale deed(s) is also not of worth consideration at this stage as that will be again adjudication of the disputed questions of fact, which is not legally justified while exercising power under Section 482 Cr.P.C., in view of the judgment of Hon'ble Supreme Court in HMT Watches (Supra).

10. In view of the above, this Court is not inclined to entertain the present petition while exercising jurisdiction under Section 482 of the Cr.P.C.

11. At this stage, learned counsel for the petitioners has made an oral request to the effect that both the petitioners have been granted bail by

learned trial Court and they be permitted to appear through counsel upto the stage of recording of statement under Section 313 of the Cr. P.C. and their personal appearance be exempted till that stage.

12. Learned Sr. counsel appearing for respondent No.2 has not opposed the oral request made by the learned counsel for the petitioners.

13. Consequently, personal appearance of both the petitioners is exempted before the learned trial Court till the prosecution evidence is concluded. However, it is made clear that in case any adverse order is passed by the learned trial Court in the absence of the petitioners, then they shall not be permitted to raise any objection(s) to the same. It is further made clear that in case the learned trial Court feels the necessity for the personal presence of the petitioners at any stage(s), then the present order shall not be treated as an absolute bar for that purpose.

14. Petition stands dismissed subject to the observations made in Para No. 13 of this order.

(MAHABIR SINGH SINDHU)
JUDGE

September 25, 2017
jyoti3/smriti

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No