IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-38153 of 2016 (O&M)
Date of Decision : 07.07.2016

Ms. Shrruty Tomar ....Petitioner

Versus

Amit Tomar ....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shamsher Pal Singh, Advocate
for the petitioner.

Mr. Abhishek Sethi, Advocate
for the respondent.

Surinder Gupta, J.

This petition has been filed by Shrruty Tomar seeking quashing of complaint no. 427 dated 04.03.2016 filed by respondent-Amit Tomar for offence punishable under Section 138 of Negotiable Instruments Act.

2. Before proceeding further, it will be relevant to take note of certain facts, which are not disputed and are enumerated as follows:-

(i) Shrruty Tomar was married with brother of complainant-respondent, namely, Ankit Tomar on 02.12.2007;

(ii) There was a matrimonial discord and petitioner-Shrruty Tomar filed a complaint with Commissioner of Police, Delhi on 08.03.2013 (Annexure P-2). In that complaint, she had narrated her matrimonial discord with husband and in-laws. She again moved another complaint dated 10.06.2015 against her husband and in-laws and ultimately got registered FIR against them vide FIR No. 892 dated 20.09.2015 recorded at Police Station Vikaspuri, West Delhi. The present complaint was filed on 07.12.2015 after registration of FIR by the petitioner against her husband and parents-in-laws.

3. As per complainant-respondent-Amit Tomar, his *bhabhi* i.e. petitioner asked for loan of ₹4 lacs in February, 2013 in order to fulfill the emergent needs of her parents and assured to pay this amount within a month. Because of his relationship, respondent paid aforesaid amount to petitioner, which was, however, not repaid despite persistent demands and ultimately, petitioner issued cheque no. 524297 dated 12.10.2015 for ₹4 lacs drawn on Bank of Baroda, Vikaspuri Branch, New Delhi in favour of respondent, which on presentation was dishonoured for want of sufficient funds. After the required notice, respondent filed the complaint in Court.

4. Learned counsel for the petitioner has argued that complainant-respondent is brother of husband of petitioner against whom she had been filing complaints levelling allegations of dowry, her ill-treatment, domestic violence etc. Complainant-respondent had taken benefit of *bona fide* of petitioner that she did not involve him in matrimonial dispute and lodged the FIR against her husband-Ankit Tomar, father-in-law Mahabir Singh Tomar, and mother-in-law Anusuya Devi. It was at this stage that complainant in order to help his brother and parents misused the blank signed cheque of petitioner lying with her husband to file the present complaint. The petitioner had been alleging throughout that her husband has her blank signed pages in his possession and may misuse the same at any point of time. Receipt (Ex. P-10) was forged on such blank signed paper. The cheque used by respondent was from her cheque book issued prior to 2011 and was an outdated cheque. She had immediately lodged a complaint, copy of which is Annexure P-9 intimating that her husband, who

was in possession of her blank signed cheques and signed papers, has misused the same. While referring to copy of statement of account of bank of petitioner (Annexure P-6), learned counsel for the petitioner has pointed out that cheques prior to cheque in question i.e. 524291, 524292, 524294, 524295 and 524296 were used in the months of January and February, 2011 while cheque no. 524299 was also used and encashed on 16.03.2011. It is not possible that instant cheque bearing no. 524297 will be issued on 12.10.2015. Even otherwise, it was an outdated cheque. New cheques prevalent in the system since 2013 were having grid based cheque truncation system. It is evident from allegations levelled by the petitioner that the matrimonial discord between the petitioner and her husband started in the year 2010. Thereafter, she gave birth to a child in the year 2011 and the matrimonial discord continued because of extramarital relations of husband of the petitioner with another lady. She has also levelled allegations of demand of dowry and her harassment on this score against her husband and parents-in-law. Respondent took benefit of the fact that the petitioner in good faith had not involved Respondent in her matrimonial dispute. He came to help of his brother and parents by filing this complaint by using blank signed cheque of petitioner, which was lying with her husband since the year 2011. Even otherwise, it is not believable that the petitioner will seek financial assistance for her parents from the brother of her husband instead of asking the husband. It is evident from the complaint that husband of the petitioner was never involved in transaction and for long two years after advancement of loan, the petitioner did not return the same and complainant issued no notice to her. It is a clear case, where husband of the petitioner and his parents have misused the blank signed cheque of petitioner, which was lying with her husband and misused process of law.

5. Learned counsel for the respondent has argued that the respondent had nothing to do with matrimonial discord of petitioner with her husband or parents-in-law. He is not named in the FIR or the complaint. He was having his separate dealings with petitioner and had advanced her loan of ₹4 lacs. She issued cheque to him for repayment of her loan amount, which on presentation with the bank was dishonoured and he filed complaint under Section 138 of Negotiable Instruments Act. At the most plea taken by the petitioner is plea of defence which she can prove by leading evidence and no reason is made out for quashing of the complaint.

6. On giving a careful thought to submissions of learned counsel for parties, I find that the point for determination in this petition is as to whether filing of complaint under Section 138 of Negotiable Instruments Act by respondent-Amit Tomar is an abuse of process of law?

7. It is not a simple case where a cheque has been issued, dishonoured and complaint has been filed. The respondent is none else than brother-in-law i.e. brother of husband of the petitioner. Timing of filing of complaint coincides with registration of FIR by petitioner against her husband-Ankit Tomar and her parents-in-law on 20.09.2015. The complaint was filed on 07.12.2015 i.e. after two and half months of registration of FIR. Earlier the petitioner had been making complaints against her husband levelling allegations of her harassment, ill-treatment, extramarital relations of her husband with a girl in the neighbourhood and domestic violence due to demand of dowry. Even in complaint dated 08.03.2013 (Annexure P-2), she has stated that her husband is having some A4 size papers with her signatures on it, which he may mis-utilize. I am not going in detail about

allegations levelled by the petitioner against her husband and parents-in-law in her complaint dated 08.03.2013 (Annexure P-2) and 10.06.2015 (Annexure P-3) but this fact is admitted that since April, 2013 the petitioner has been living with her parents. As per allegations in complaint, matrimonial discord has started in the year 2010, when the petitioner became pregnant and her husband developed illicit relations with another lady named in the complaint. As per respondent, he advanced amount of ₹4 lacs in February, 2015. This version of respondent appears to be not probable. Firstly, because the petitioner, if was having cordial relations with her husband, she would have asked for the money for her parents from her husband and not from her brother-in-law. Secondly, when she was having matrimonial discord with her husband, the brother-in-law will refrain from helping her because of her strained relations with his brother and parents. Thirdly, if he had advanced ₹4 lacs to petitioner, he will not accept outdated cheque in the year 2015 towards payment of that amount. Fourthly, statement of accounts shows that cheques prior to cheque in question and even after this cheque were got encashed by March, 2011, so it cannot be believed that this cheque will be issued by the petitioner to respondent in the year 2015 i.e. after more than 4 years of issuance of cheque, which is after serial number of the cheque in question. In her complaint (Annexure P-2), the petitioner has alleged that her blank papers are in possession of her husband. It is alleged that when the cheque in question was presented, the petitioner was apprised by the bank that the cheque presented by respondent is from the old cheque book and is an outdated cheque. New cheques are grid based cheques and are having truncation system for the last more than two years before the presentation of this cheque. She immediately filed a complaint that her husband, who is in possession of her blank signed cheques and signed papers, had used this cheque because of strained relations with her.

8. The timing of filing of complaint coincides with registration of FIR by petitioner against her husband and parents-in-laws on 20.09.2015. It is a detailed FIR giving sequence of events after her marriage in the year 2008. It appears that to counter the step taken by the petitioner, her husband took assistance of his brother by getting the present complaint filed against his wife.

9. Before proceeding further, it will be relevant to have a look at scope of power and jurisdiction of this Court under Section 482 Cr.P.C. to interfere in the criminal proceedings. The law to this effect has been well settled in case of ***State of Haryana* vs. *Bhajan Lal*, (1992) Supp 1 SCC 335,** where in it was held as under:-

> *"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
>
> *(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
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> *(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
>
> *(d) where the allegations in the FIR do not constitute a*

cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. In the present case, complaint has been filed by brother-in-law of the petitioner. Facts in the background clearly indicate that there has been a matrimonial discord and breakdown of relationship of petitioner and her husband. The petitioner had been filing complaints against her husband and parents-in-law since the year 2013 enumerating her matrimonial discord with husband since the year 2010 when he allegedly indulged in extramarital relations. It is not disputed that since April, 2013, the petitioner is living separately from her husband. In this background, it is required to be examined as to whether it is probable and conceivable that respondent had advanced loan of ₹4 lacs to petitioner without consulting

his brother and parents. Cheque in this case was allegedly issued on 12.10.2015 i.e. after registration of FIR by petitioner against her husband and parents-in-law on 20.09.2015. It is highly improbable that a lady who had been filing complaints against her in-laws and has gone to the extent of getting the FIR registered will issue cheque in favour of complainant-respondent after registration of FIR. This cheque was also an outdated cheque and cheques even of serial number prior and subsequent to this cheque were already got encashed in the year 2011. All this is indicative of fact that there is substance in submissions of petitioner that her blank signed cheques were lying at her matrimonial home pertaining to her cheque book issued prior to 2011 and were misused by her husband by getting the complaint filed under Section 138 of Negotiable Instruments Act through his brother. Given the bitter relationship between the petitioner and her in-laws, it is highly improbable that there was any occasion for the respondent to advance any loan and then wait for a period for more than two years. It is further not probable that the petitioner will issue cheque in favour of the respondent after she has got registered the FIR against her husband and parents-in-law. The very nature of complaint and averments therein suggest that it was a malicious act on the part of respondent in connivance with his brother and family members just to put pressure on the petitioner, who had dared to get registered FIR against her husband and parents-in-law. There is nothing in the complaint that respondent was favouring the petitioner despite her matrimonial discord with her husband and parents-in-law. In natural course respondent would side by his brother and parents and go to any extent to help them in the facts and circumstances as narrated above. Taking note of above facts, I am of the considered opinion that complaint filed by respondent-Amit Tomar is a sheer misuse of process of Court and is a counter-blast to matrimonial discord between the petitioner and her husband. Submissions of learned counsel for the respondent that plea taken by the petitioner is the plea of defence, which can be proved only by leading evidence has no substance and this view of mine is based on perusal of documents produced on file, which are neither disputed nor rebutted.

11. As a sequel of my above discussion, this petition is allowed and complaint filed by respondent-Amit Tomar bearing no. 427 dated 04.03.2016 under Section 138 of the Negotiable Instruments Act alongwith all consequential proceedings arising therefrom, qua petitioner, is quashed.

July 07, 2017 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/Reasoned Yes/No

Whether Reportable Yes/No