

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-7008 of 2017

Date of Decision: 19.07.2017

Sanjay Kumar

...Petitioner(s)

Versus

Gurbax Kaur

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. D. Hasija, Advocate
for the petitioner.

Mr. M.S. Saini, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the order dated 17.12.2015 (Annexure P-1) passed by Judicial Magistrate Ist Class, Hoshiarpur in Criminal Complaint No.134 of 2015 titled as '*Gurbax Kaur Vs. Munfed & another*', whereby the petitioner has been summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act").

Learned counsel for the petitioner has argued that the respondent-complainant has filed a complaint under Section 138 of the Act, wherein, the cheque dated 11.2.2015 issued by Munfed son of Ibrahim for an amount of Rs.21,50,500/- in the name of Sarpanch of Gram Panchayat, Cohar of Oriental Bank of Commerce had bounced. He has further argued

that the cheque in question was not issued or signed by the petitioner, rather the same was signed by Munfed son of Ibrahim from his individual account. Therefore, once it is established that neither the petitioner has signed the cheque nor the cheque belongs to him, he cannot be summoned under Section 138 of the Act.

On the other hand, learned counsel for the respondent has argued that at the time of auction, the petitioner was present with Munfed son of Ibrahim. He further submits that the petitioner has remedy of filing a revision petition against the order of summoning.

I have heard learned counsel for the parties and perused the impugned order.

A bare glance of the cheque No.004552 dated 11.2.2015 (Annexure P3) shows that the cheque was signed by Munfed son of Ibrahim in favour of Sarpanch, Gram Panchayat, Cohar and not signed by the petitioner. Further the account No.00532191046111 from which, the cheque in question was issued is also not in the name of the petitioner.

Therefore, this Court finds that the order of summoning of the petitioner runs contrary to the provisions of Section 138 of the Act.

In this view of the matter, the present petition is allowed and the order of summoning dated 17.12.2015 passed by Judicial Magistrate, Hoshiarpur is set aside.

July 19, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No