

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-11358-2014 (O&M)

Kuljit Kaur

..... Petitioner

Versus

Kuldeep Singh and another

..... Respondents

2. CRM-M-11359-2014 (O&M)

Kuljit Kaur

..... Petitioner

Versus

Kuldeep Singh and another

..... Respondents

Date of decision: 30.07.2018

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Gurcharan Dass, Advocate
for the petitioner (in both cases).

Mr. SS Rangi and Mr. HS Tuli, Advocates
for respondent No. 1 (in both cases).

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

1. This order shall dispose of above titled two petitions under Section 482 Cr.P.C., for quashing of Criminal Complaint Nos. 12/2 and 13/2 both dated 29.04.2013 (Annexure P-1) under Section 138 of the Negotiable Instruments Act (for short-'the Act'); summoning orders dated 02.11.2013 (Annexure P-2) of the learned Sub Divisional Judicial Magistrate, Samrala and notices dated 21.01.2014 (Annexure P-3) and all

the subsequent proceedings arising therefrom. For brevity, the facts are being extracted from CRM-M-11358-2014.

2. Put pithily, petitioner and respondent No. 1-Kuldeep Singh are real sister and brother. Respondent No. 1, filed two complaints under Section 138 of the Act, against his sister-Kuljit Kaur (petitioner herein) for issuance of two cheques of ₹ 25,00,000/- each bearing Nos. 021590 and 021591, both dated 18.03.2013, which on presentation were returned by the Bank for “insufficient funds”. The trial Court after recording preliminary evidence, summoned the petitioner vide impugned order dated 02.11.2013 (Annexure P-1) passed separately in each complaint. After appearance of petitioner, notice of accusation dated 21.01.2014 (Annexure P-2) was served upon the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that petitioner and respondent No. 1 being real sister and brother had obtained joint loan of ₹ 8,00,000/- each, in lieu of family settlement amongst them. On the pretext of securing the loan amount, respondent No. 1-Kuldeep Singh, had obtained 16 cheques from the petitioner and dishonestly kept 2 cheques duly signed by the petitioner. Thereafter, fraudulently filling the amount of ₹ 25,00,000/- in each cheque, respondent No. 1 presented the same to the Bank and filed false complaints. In fact, no such cheques were ever issued by the petitioner to respondent No. 1. Therefore, on receipt of legal notice dated 28.03.2013 (Annexure P-5) from respondent No. 1, the petitioner got lodged FIR No. 74 dated 20.07.2013 (Annexure P-7) under Sections 420, 467, 468 and 471 IPC, Police Station Doraha, Police District Khanna, District Ludhiana, against respondent No. 1 for committing fraud

and cheating with her. The police after due investigation has filed final report under Section 173(2) Cr.P.C. against respondent No. 1 and as on date, trial is pending against him. In the reply dated 05.04.2013 (Annexure P-6) to the legal notice Annexure P-5 also, the petitioner took all the aforesaid pleas refraining respondent No. 1 not to commit any fraud and cheating with her. The trial Court while issuing summoning order and serving notice of accusation (Annexures P-2 and P-3, respectively) upon the petitioner erroneously did not consider the aforesaid FIR (Annexure P-7) got lodged by the petitioner against respondent No. 1 as well as reply Annexure P-6 to the legal notice of respondent No. 1. If the trial Court would have considered the above documents, in that eventuality, it must have dismissed both the complaints primarily. The trial Court also failed to appreciate that respondent No. 1 had filed both the complaints by concealing true facts from it.

4. On the other hand, learned counsel for respondent No. 1 vehemently opposing the submissions of learned counsel for the petitioner pleaded the legality and validity of the impugned summoning order and notice of accusation Annexures P-2 and P-3, respectively, urging that all the documents referred to above by learned counsel for the petitioner were well considered by the trial Court, while issuing summoning order and serving notice of accusation to the petitioner. In support of his contention learned counsel for respondent No. 1 has placed reliance upon judgment of Hon'ble the Supreme Court in **HMT Watches Ltd. Vs. M.A. Abida and another, 2015(2) RCR (Civil) 497** and of this Court in **Avtar Singh Vs. Canara Bank, 2008(4) RCR (Civil) 300.**

5. Having considered the rival submissions made by learned counsel for both the parties, I find both the above titled petitions completely devoid of any merit for the reasons to follow:

6. The points raised by learned counsel for the petitioner qua reply Annexure P-6 to the legal notice Annexure P-5 and registration of FIR Annexure P-7 against respondent No. 1-complainant, are disputed questions of fact, which can only be determined during trial, after recording evidence of the parties. It is pre-mature to say that the trial Court, ought to have dismissed the complaints without recording evidence of respondent No. 1-complainant.

7. That apart, the petitioner has every right to rebut the evidence of respondent No. 1 by leading evidence in her defence. Admittedly, two cheques duly signed by the petitioner were in the custody of respondent No. 1. The petitioner never lodged any complaint prior to receipt of legal notice Annexure P-5, about the alleged misconduct of respondent No. 1, who is her real brother that he had illegally kept two cheques, out of 16 cheques handed over by her to respondent No. 1. She even never served any legal notice to respondent No. 1 to return the said cheques in question.

8. More so, in case, respondent No. 1-complainant has misused the cheques in question as alleged, in that eventuality, the petitioner has every right to dislodge the claim of respondent No. 1 by leading cogent and convincing evidence that both the cheques in question have been mis-utilized by respondent No. 1, with dishonest intention to cheat and defraud the petitioner.

9. At this stage, in the petition under Section 482 Cr.P.C., such

type of peculiar questions raised cannot be decided without evidence which the parties have to lead before the trial Court.

10. In view of the discussion made above, both the petitions i.e. CRM-M-11358-2014 and CRM-M-11359-2014, being completely devoid of any merits are dismissed.

July 30, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**