

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-12771-2018

Date of Decision: 29.10.2018

Arvinderjit Kaur

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. S.S. Chatrath, Advocate
for the petitioner.

Mr. Ashish Sanghi, D.A.G. Haryana.

Mr. Hemraj Bhardwaj, Advocate
for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has sought for the following relief:

“Petition under Section 82 of the Code of Criminal Procedure, 1973 seeking quashing of complaint No.2209-II dated 11.10.2017 (Annexure P-4) and summoning orders dated 2.12.2017 (Annexure P-5) passed by the Court of Ms. Vandana JMIC, Hisar whereby the petitioner has been summoned to face trial in the proceedings emanating from Criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 titled as “Hinduja Leyland Finance Limited Hinduja Leyland Finance Company Limited having its registered office at No.1 Sardar Patel Road Guindy, Chennai and Branch Office at DSB 222, Ground Floor, Green Square Market Hisar through its Legal Manager and Authorised Signatory Sh. Manish Kumar Versus Arvinder Jit Kaur” and quashing of all consequential proceedings arising out thereof.”

2. Learned counsel for the petitioner submitted the complaint under Section 138 is not maintainable insofar as dishonour of cheque dated

3.7.2017 for a sum of Rs.12,93,413/- for the reasons that cheque was dishonoured on the score that account was closed. Insofar as return of the cheque with reference to account is closed is concerned, proceedings under Section 138 of the Negotiable Instruments Act are not attracted. In this regard, learned counsel for the petitioner relied on a decision of the Delhi High Court reported in 2017 (2) MadWN (CrI) titled as ***Ceasefire Industries Limited v. State and others*** to the extent that reasons for returning the cheque is “account blocked”. Thus, dishonour of cheque due to account block would not fall under Negotiable Instruments Act.

3. On the other hand, learned counsel for the respondent vehemently contended that in the complaint in para-8, it is stated that petitioner has cheated the complainant by issuing cheque assuring the complainant of its honour, whereas he had closed his bank account. As such, the accused have made themselves liable for commission of an offence of cheating also. Even in para-12 in the prayer column, it was pointed out that petitioner has committed offence under Section 420 IPC. Learned counsel for the respondent further submitted that on 19.6.2017, necessary demand was made to the petitioner for which a cheque was issued on 3.7.2017 for a sum of Rs.12,93,413/- which was the subject matter. Petitioner was well aware that as on the date of issuance of cheque on 3.7.2017 the account which referred in the cheque was not operating and it was blocked. Thus, he has cheated. Therefore, while considering the complaint under Section 138 of the Negotiable Instruments Act, Section 420 IPC is also required to be taken into consideration.

4. Heard learned counsel for the parties.

5. Crux of the matter in the present petition is that complaint

under Section 138 of the Negotiable Instruments Act is maintainable or not having regard to the facts of the case or not?

6. Gist of the case is that respondent have issued demand notice on 19.6.2017 for a sum of Rs.6 lacs plus for which petitioner had issued a cheque on 3.7.2017 for a sum of Rs.12,93,413/-. When the respondent presented the cheque, it was dishonoured with the note that account is blocked (account is closed). Having regard to the nature of return of the cheque read with reasons namely “account blocked” would not attract Section 138 of the Negotiable Instruments Act. Respondent's contention that Section 420 IPC has been pointed out in the complaint in respect of cheating to the extent that petitioner has issued a cheque with reference to non-existing account. Perusal of the complaint, it is evident that complaint is under Section 138 of the Negotiable Instruments Act. If at all, petitioner has cheated the respondent, in that event, respondent should have resorted to making necessary application before the jurisdictional police or Magistrate only in respect of cheating having regard to the fact that Section 138 of Negotiable Instrument Act is not attracted with reference to the above facts and circumstances. Thus, petitioner has made out prima facie case.

7. Accordingly, petition is allowed and complaint No.2209-II dated 11.10.2017 (Annexure P-4) and summoning orders dated 2.12.2017 (Annexure P-5) passed by the Court of Ms. Vandana JMJC, Hisar whereby the petitioner has been summoned to face trial in the proceedings emanating from Criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 titled as “Hinduja Leyland Finance Limited Hinduja Leyland Finance Company Limited having its registered office at No.1 Sardar Patel

Road Guindy, Chennai and Branch Office at DSB 222, Ground Floor, Green Square Market Hisar through its Legal Manager and Authorised Signatory Sh. Manish Kumar Versus Arvinder Jit Kaur” alongwith all consequential proceedings arising therefrom are set aside.

29.10.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**