

CRM-M-14619-2017 (O&M)

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

CRM-M-14619-2017 (O&M)

Date of Decision: 5.7.2018

Ms. Richa Sharma

.....PETITIONER(s).

VERSUS

The Punjab State Cooperative Bank Limited

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. H.N.Sahu, Advocate
for the petitioner.

Mr. Naginder Singh Vashisth, Advocate,
for the respondent.

RAJ SHEKHAR ATTRI, J.(Oral)

This is a petition under Section 482 of Code of Criminal Procedure for quashing of complaint No.3901 of 18.8.2015 (Annexure P-1) under Section 138 of Negotiable Instruments Act on the ground that there was no legal debt payable by the petitioner to the respondent and also that as per agreement between the parties, the matter should have been referred to the Arbitrator under the provisions of Clause 12 of the agreement (Annexure P-3).

The facts necessary for disposal of the petition are that the respondent-complainant/Punjab State Cooperative Bank Limited (in short, complainant bank) filed a complaint under Section 138 of Negotiable Instruments Act on the allegations that the petitioner applied

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for credit loan facility against earnest money with the purpose to deposit ₹ 1,80,000/- as earnest money with Punjab Urban Development Authority (in short, PUDA) at Bathinda with regard to purchase of a 200 square yards plot.

In pursuance of the request, the loan was advanced under the scheme. The petitioner agreed to repay the loan within four months along with interest @ 12% but the petitioner did not repay the amount, rather, in discharge of his financial liability towards the complainant, the petitioner has issued a cheque for a sum of ₹ 2,35,000/-. When presented, said cheque was dishonoured for want of sufficient funds, therefore, the complaint was filed and the petitioner was summoned as accused to face trial.

Instant petition was filed alleging therein that as per Clause 10 and 12 of the agreement dated 2.7.2013, the petitioner is not liable to make payment. This Court would like to reproduce Clause 10 and 12 of the agreement hereunder : -

“10. Upfront charges recovered will not be refunded. If the drawn of plot exceed three months period from the date of loan, the interest for the period exceeding three months will be paid by the applicant.

12. In case of any dispute the matter shall be refer to the Registrar Cooperative Societies, Punjab, Chandigarh as per Cooperative Societies Act, 1961 and his decision will be final and binding upon both the party.”

I have heard learned counsel for the parties and gone through the record.

In this case, the petitioner applied for a plot under PUDA and

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submitted an application for loan to the respondent complainant which was allowed and the petitioner was advanced a loan amount of ₹ 1,80,000/- to deposit as earnest money with PUDA authorities. The said plot was allotted to her by PUDA but Annexure R-8 is the official order vide which earnest money of ₹ 1,80,000/- deposited by the petitioner as earnest money was forfeited because the petitioner failed to deposit 15% of the price of the plot within the stipulated period.

Undisputedly, the petitioner issued a cheque which was duly signed by her; said cheque has been dishonoured due to want of sufficient funds, therefore, the petitioner is liable under Section 138 of Negotiable Instruments Act. The petitioner wants to take benefit of Arbitration clause but this is a matter of evidence and such plea can be taken before the learned trial Court.

The Hon'ble Supreme Court in State of Haryana and others versus Ch. Bhajan Lal Ors. has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein

such power should be exercised.

1. Whether 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.
2. 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.
3. 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.
4. Whether, the allegations in the F.I.R. 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.
5. Where the allegations made in the F.I.R. 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.
6. 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.

7. 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.”

No ground is made out for interference by this Court.

Dismissed.

July 5, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>