

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M-17507-2018

Date of Decision:11.10.2018

Ved Parkash Malik

.....Petitioner

Versus

State of Punjab and another

.....Respondents

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

**Present: Mr. Inderjeet Singh Chawla, Advocate,
for the petitioner.**

Mr. Rana Harjasdeep Singh, D.A.G., Punjab.

**Mr. Munish Jain, APP,
for U.T., Chandigarh.**

**Mr. Jatinder Kumar, Advocate,
for respondent No.2-complainant.**

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of order dated 07.11.2017, whereby the petitioner was declared proclaimed offender as well as complaint No.7543/2016 titled as “M/s G&G Industries Versus Ved Parkash Malik” under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I. Act”) pending before the trial Court.

Reply sent by Judicial Magistrate 1st Class, Chandigarh, along with comments of the District & Sessions Judge, Chandigarh, has been received and the same is perused.

Petitioner is stated to have appeared before the trial Court and

has been admitted on bail.

Learned counsel for the petitioner states that by mistake State of Punjab has been arrayed as party-respondent No.1 as no relief has been claimed against it and the contesting party is only respondent No.2.

Briefly stated, respondent No.2 had filed a complaint under Section 138 of the N.I. Act read with Section 420 IPC with an averment that the petitioner-accused used to take construction material on rent as he was doing the work of construction of buildings and was in friendly relations with the complainant.

Petitioner-accused has taken construction material from the complainant for a sum of ₹3,45,000/- and the petitioner assured the complainant that he will return the same within a short span. However, when the complainant demanded the money from the petitioner-accused, the accused had issued a cheque No.088364 dated 25.07.2016 for a sum of ₹3,45,000/- of IndusInd Bank bearing account No.0520-B58002-061 in favour of the complainant and had assured the complainant that on presentation of the cheque, it would be encashed. However, when the cheque was presented for collection on 02.08.2016, the same was returned with the remarks of “over writing” on the deposit slip dated 04.08.2016. The complainant contacted the petitioner-accused and has shown him the said cheque, but the accused put the matter on one pretext or the other. Thereafter, the complainant sent a legal notice dated 22.09.2016 by way of registered post to the petitioner, which was duly served. Since the amount was not paid despite having been issued legal notice, complaint under Section 138 of the N.I. Act was filed against the petitioner-accused. In the said complaint, petitioner was declared proclaimed offender vide order

dated 07.11.2017.

Learned counsel for the petitioner states that during the pendency of the present petition, petitioner has sought anticipatory bail from the lower court and as a consequence thereof, he appeared before the trial Court and was admitted on bail. He has further argued that there is no return memo issued by the Bank so as to substantiate the allegation of respondent No.2-complainant, that the cheque issued by the petitioner was ever presented to the Bank for clearance and the same was dishonoured. He further states that the document (Annexure P-1) as attached with this paper-book i.e. a slip issued by the Bank is a fabricated document and in fact no such return memo was ever issued by the Bank. Therefore, the complaint deserves to be quashed on this ground alone.

On the other hand, learned counsel for respondent No.2-complainant has argued that the said cheque was presented before the Bank. As per his instructions, the complainant has presented the cheque in Allahabad Bank and the same was returned back with the remarks of “over writing”.

I have heard learned counsel for the parties.

So far as plea of the petitioner that on account of P.O. Order having been passed, petitioner has been granted anticipatory bail by the lower court, prayer of the petitioner for quashing of P.O. Order dated 07.11.2017 has become infructuous.

However, prayer of the petitioner for quashing of complaint on the ground pleaded therein that the cheque was never presented before the Bank and no return memo has been issued, this Court finds that it is a matter to be adjudicated upon by the trial Court as disputed questions of facts are

involved in the present case. Counsel for the petitioner states that the cheque was never presented and the return memo is a fabricated one, whereas counsel for respondent No.2-complainant has argued that the same was duly presented and has been returned on account of “over writing”. This issue needs to be adjudicated by the trial Court, and parties would be at liberty to lead their respective evidence.

Accordingly, the present petition is dismissed.

October 11, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No