

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-22186-2018

Date of decision: 05.09.2018

Ritu Raj

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Subhash Godara, Advocate for the petitioner.

Mr. Yashwinder Singh, DAG, Haryana.

Mr. Vikash Chaudhary, Advocate for
Mr. Kuldeep Singh, Advocate for respondent No. 2.

RAMENDRA JAIN, J. (ORAL)

Vakalatnama on behalf of respondent No. 2 and reply filed by learned State counsel in the shape of affidavit Sh. Virender Singh, HPS, Deputy Superintendent of Police, Rohtak, are taken on record. Office to tag the same at the appropriate places.

Through this petition under Section 482 Cr.P.C., petitioner-Ritu Raj, has prayed for quashing order dated 17.02.2018 (Annexure P-7) of the Sub Divisional Judicial Magistrate, Meham, declaring him as proclaimed offender in Complaint No. 75 dated 01.08.2016 (Annexure P-2) and also for quashing FIR No. 262 dated 26.04.2018 (Annexure P-1) under Section 174-A IPC, Police Station Meham, District

Rohtak, lodged against the petitioner and all the subsequent proceedings arising therefrom.

In nutshell, the petitioner obtained a loan of ₹57,873/- from respondent No. 2. To secure the loan amount, he handed over a cheque bearing No. 005171 dated 18.06.2016 of the State Bank of India, Rohtak, in favour of respondent No. 2. When the petitioner did not adhere to the terms and conditions of the loan agreement in between him and respondent No. 2, it presented the cheque of petitioner to recover the loan amount, but the same was dishonoured with the remarks "Funds Insufficient".

Consequently, finding no option, respondent No. 2 filed complaint Annexure P-2, under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner, in which he was ordered to be summoned for 06.03.2017, vide order dated 08.12.2016 (Annexure P-3). By that time, the petitioner had cleared the entire loan amount as admitted at Bar by learned counsel for respondent No. 2. Despite that respondent No. 2 instead of withdrawing its complaint Annexure P-2, illegally kept on continuing with it, without bringing the fact about repayment of entire loan amount by the petitioner to the notice of the Court. Resultantly, the petitioner was declared proclaimed offender and FIR Annexure P-1 was got recorded against him vide order Annexure P-7, impugned herein.

Learned counsel for the petitioner *inter alia* contends that after repayment of the entire loan amount, it was earnest duty of

respondent No. 2-complainant to withdraw its complaint. After payment of the entire loan amount, the complaint (Annexure P-2) was not worth service of even notice of accusation upon the petitioner. Therefore, the entire proceedings conducted by the trial Court are liable to be quashed, in view of the fact that respondent No. 2 has already withdrawn its complaint, as is apparent from the order dated 22.04.2018 (Annexure P-5) of the National Lok Adalat, Meham.

On the other hand, learned counsel for respondent No. 2 has fairly admitted to the contentions raised by learned counsel for the petitioner.

Having considered the submissions of both the sides and going through the file, this Court is of the opinion that the impugned FIR No. 262 dated 26.04.2018 (Annexure P-1) as well as order dated 17.02.2018 (Annexure P-7), are liable to be quashed, in view of the fact that petitioner had already deposited the entire loan, much prior to declaring him as proclaimed offender. Even no notice of accusation was ever served upon the petitioner. It seems that Advocate for respondent No. 2 before the trial Court, erroneously and illegally kept on pursuing the complaint un-necessarily, despite the fact that nothing had survived in it, which now has admittedly been withdrawn on 22.04.2018.

That apart, perusal of the interlocutory orders (Annexure P-6, Colly.), shows that the petitioner was never effectively served. Therefore, his declaration as proclaimed offender vide order dated 17.02.2018 (Annexure P-7) and lodging FIR No. 262 dated 26.04.2018

(Annexure P-1), are patently illegal.

In view of the above, the instant petition is allowed. Impugned order dated 17.02.2018 (Annexure P-7) as well as FIR No. 262 dated 26.04.2018 (Annexure P-1) and all the subsequent proceedings arising therefrom are quashed.

September 05, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No