

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

CRM-M-26667 of 2016.

Decided on:- December 05, 2018.

Anil Kumar Mehta.

.....Petitioner.

Versus

Harcharan Singh.

.....Respondent.

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

Present:- Mr. Pushpinder Kaushal, Advocate
for the petitioner.

None for the respondent.

HARI PAL VERMA, J. (Oral)

Petitioner Anil Kumar Mehta has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the complaint No.1641 of 2015 dated 11.06.2015 (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) filed by the respondent-complainant against the petitioner as well as the order dated 11.06.2015 passed by learned Judicial Magistrate 1st Class, Amritsar (Annexure P-2), whereby the petitioner was summoned to face trial under Section 138 of the Act in the aforesaid complaint.

Learned counsel for the petitioner has argued that Prachi Mehta daughter of the petitioner got married with the respondent-complainant on 15.12.2006, but on account of temperamental differences, dispute arose between them. Accordingly, with the intervention of respectables and family

members, a compromise was arrived at between the parties to the matrimonial dispute. As per the settlement, Prachi was required to pay a total sum of Rs.5 lakh to the respondent-complainant and pursuant thereto, the petitioner had issued two cheques to the respondent-complainant i.e. one for Rs.3,50,000/- bearing No.155270 and the second for Rs.1,50,000/- bearing No.155273 both drawn on State Bank of India, New Shopping Complex, Rihand Nagar, District Sonbhadar (U.P.).

He has further contended that the payment of first cheque of Rs.3,50,000/- was received by the respondent-complainant, whereas the second cheque of Rs.1,50,000/- was agreed to be paid after the grant of decree of divorce by the Court, as at that time, the case of divorce was under consideration of the Court. The cheque of Rs.1,50,000/- given to the respondent-complainant was conditional and, therefore, undated. However, it was made clear that all the properties, articles and anything due will be the ownership of Prachi and the child will remain with Prachi. The cheque of Rs.1,50,000/- was presented by the respondent-complainant in the bank on 19.05.2015, but the same was dishonoured on account of “*Insufficient Funds*”, which led to filing of the complaint by the respondent-complainant and summoning thereof.

He has further contended that the petitioner had issued the cheque in question in execution of the compromise dated 23.03.2015. The respondent was required to present the said cheque in the bank only after the culmination of the divorce petition as the cheque was conditional. However, without waiting for the culmination of the divorce petition, the respondent-

complainant presented the cheque in the bank. The cheque in question was presented in the bank on 19.05.2015, but on the said date, the divorce petition had not culminated and was pending consideration before the matrimonial Court.

I have heard learned counsel for the petitioner.

No one is present on behalf of the respondent despite having been served. Even on the last date of hearing, no one was present on behalf of the respondent. It shows that the respondent is not interested to controvert the case as put forth by the petitioner.

The averments made by the petitioner in the present petition have gone un rebutted. The divorce petition between the daughter of the petitioner and the respondent-complainant is still pending. The issuance of cheque in question was conditional as it was based on the culmination of the divorce petition. The document (Annexure P-3) shows that there was a clear endorsement on the cheque to the effect that the cheque in question will be honoured only after grant of divorce between the parties. The said endorsement reads as under:

“I am given this cheque on account of execution of compromise dated 23.3.2015 regarding divorce of my daughter Prachi Mehta. The same will be honoured only after grant of divorce between my daughter and Harcharan. Harcharan is agreed in case the cheque is not honoured due to the reason then I will make the cheque payment by way of draft.”

The divorce between Prachi Mehta and the respondent-complainant had not taken place, but still the complainant presented the

cheque in the bank. Thus, this Court finds that the respondent-complainant has violated the very terms of the compromise entered between him and Prachi Mehta. There is a clear recital in the compromise that the cheque bearing No.155273 will be paid only after divorce is granted by the Court. So long as the divorce petition had not culminated, it was pre-mature for the complainant to present the cheque to the bank. Thus, this Court finds that the complaint under Section 138 of the Act filed by the respondent-complainant against the petitioner is liable to be quashed.

Accordingly, the present petition is allowed and the complaint No.1641 of 2015 dated 11.06.2015 titled as ***Harcharan Singh Versus Anil Kumar Mehta*** (Annexure P-1) under Section 138 of the Act is quashed and the summoning order dated 11.06.2015 passed by learned trial Court in the aforesaid complaint is set aside.

December 05, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No