

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-32591 of 2018

Date of Decision: 24.09.2018

Indiabulls Housing Finance Ltd.

...Petitioner(s)

Versus

Narula Electricals & others

...Respondent(s)

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

Present:- Ms. Kiran Bala Jain, Advocate
for the petitioner.

Mr. Baldev Singh Badhran, Advocate
for respondents.

HARI PAL VERMA, J. (Oral)

Petitioner - Indiabulls Housing Finance Limited has filed the present petition under Section 482 Cr.P.C. for modification in the summoning order dated 04.04.2016 (Annexure P-2) passed by Judicial Magistrate Ist Class, Gurgaon in complaint no.1022 dated 30.01.2016 and for setting aside the order dated 05.04.2018 (Annexure P-1), whereby the application filed by the petitioner for modification of order dated 04.04.2016 has been dismissed.

Learned counsel for the petitioner has argued that the petitioner had filed a complaint under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (for short, "the Act") and Section 37

CrPC against the respondents-accused, with the allegations that the respondents-accused had issued two cheques bearing Nos.598 and 599 both dated 05.11.2015 drawn on Andhra Bank for amount of Rs.2,14,223/- each with an assurance that the same will be honoured on presentation. However, on presentation of the aforesaid cheque in the bank, the same were dishonoured and returned unpaid vide return memos dated 05.12.2015 and 16.12.2015 with the remarks 'funds insufficient'. Accordingly, legal notice dated 02.01.2016 was issued. However, as the respondents-accused failed to make payment of the aforesaid cheque amount, it constrained the petitioner to file a complaint under Section 138 of the Act.

In the preliminary evidence, the petitioner has duly reiterated that in partial discharge of their loan liability, the respondents-accused had issued two cheques bearing Nos.598 and 599 both dated 05.11.2015 drawn on Andhra Bank for amount of Rs.2,14,223/- each in favour of the petitioner-complainant with an assurance that on presentation, the same will be honoured. But on presentation, the cheques were dishonoured on the ground of 'insufficient fund'

On the basis of the aforesaid preliminary evidence, learned Magistrate vide order dated 04.04.2016 summoned the respondents accused, but in the summoning order, reference was made only to one cheque bearing no.598 dated 05.11.2015 and cheque no.599 dated 05.11.2015 was not mentioned in the order inadvertently. Since there was a typographical error in the summoning order dated 04.04.2016, the petitioner moved an application seeking clarification of the order dated 04.04.2016 with a prayer to take into consideration the other cheque i.e.

cheque no.599 dated 05.11.2015 as well. However, the said application was dismissed by the Magistrate vide order dated 05.04.2018 on the ground that once a Magistrate has passed an order, he has no power to review or recall his own order and the remedy, if any, lies with the High Court under Section 482 CrPC or Article 227 of the Constitution of India.

On notice of motion having been issued, Mr. Baldev Singh Badhran, Advocate has put in appearance on behalf of the respondents-accused and filed his *vakalatnama* in Court, which is taken on record.

Learned counsel for the respondents-accused has argued that there is no illegality in the order dated 05.04.2018 passed by the Magistrate. Once an order has been passed by the Magistrate, he cannot review his own order and therefore, his application for review has rightly been dismissed and thus, the present petition also deserves to be dismissed.

I have heard learned counsel for the parties and perused the impugned order.

This Court has inherent powers under Section 482 CrPC, so as to secure the ends of justice. There is no dispute that the respondents-accused had issued two cheques bearing Nos.598 and 599 both dated 05.11.2015 drawn on Andhra Bank for amount of Rs.2,14,223/- each with the assurance that the same will be honoured on presentation. However, on presentation of the said cheques with the bank, the same were dishonoured and accordingly, the complaint under Section 138 of the Act was filed. There is no error so far as filing of complaint or leading preliminary evidence on behalf of the petitioner is concerned. The illegality, if any, lies with the Magistrate, as the Magistrate for some reason has failed to make

reference of cheque no.599 dated 05.10.2015. On account of mistake, on the part of the Court, the petitioner cannot be made to suffer.

Accordingly, the present petition is allowed, impugned orders dated 04.04.2016 and 05.04.2018 are set aside and the Judicial Magistrate Ist Class, Gurgaon is directed to pass a fresh summoning order after taking into consideration cheque no.599 dated 05.10.2015, as mentioned in the complaint and the affidavit.

September 24, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No