

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

CRM-M-37926-2018 (O&M)

Date of Decision:-31.8.2018

M/s Sanatan Merchants Pvt. Ltd.

... Petitioner

Versus

M/s Beverly Hills Polo Club Fragrances Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rahul Sharma-I, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioner assails the complaint filed against him under Section 138 of Negotiable Instruments Act, 1881 and also the summoning order dated 17.3.2018, whereby he has been summoned to face trial in respect of the aforesaid offence.

The learned counsel for the petitioner has submitted that in fact he had commercial relations with the complainant and the petitioner had been appointed as a Super Stockist of the respondent and a blank cheque i.e. cheque No.317526 had been given to the complainant as security. The learned counsel for the petitioner in this context has referred to letter dated 7.3.2013 (Annexure P-4), wherein cheque number is specifically mentioned and it is also specifically stated therein that the cheque is not to be used for regular payments. The learned counsel has further submitted that subsequently the complainant terminated the agreement vide Annexure P-5 with effect from 26.3.2014 and pursuant to the said termination, both the parties in order to settle the accounts worked out an arrangement for

return of the articles, which were to be returned by the petitioner and for some payment, which was to be made by the complainant. The learned counsel submits that, however, the complainant did not honour the said arrangement and subsequently the petitioner was constrained to file a complaint against the complainant for offences under Section 415 read with Section 418 of Indian Penal Code, 1860, wherein he was summoned. Although the complainant challenged the summoning order but the same was dismissed and that in fact the petition for quashing of the complaint was also dismissed.

The learned counsel has submitted that it was thereafter that the present complaint has been filed as a counter blast. It has been submitted that once the business and commercial relations between the parties stood terminated in the year 2014, there was no occasion for the complainant to have presented the security cheque in the year 2017 and that it is apparent that there was no existing legal liability and that the cheque in question had been misused. The learned counsel for the petitioner has also submitted that in fact the petitioner has also filed another complaint against the complainant for misuse of the cheque in question.

Having heard the learned counsel for the petitioner, I find that the petitioner is relying upon several documents to put forth his aforesaid submissions. Bearing in mind the fact that the entire case of the petitioner is based on a large number of documents, the authenticity of which can not be determined in present proceedings, it would be appropriate that all the contentions be raised before the trial Court at appropriate stage.

Accordingly, the present petition is disposed of with liberty to the petitioner to raise all the contentions raised herein before the trial Court

at appropriate stage. The trial Court shall consider all the submissions raised on behalf of the petitioner by passing a speaking order. It is further ordered that presence of accused before the trial Court be exempted upon filing of an appropriate application before the trial Court subject to the following conditions:-

- (i) he will be represented by a counsel;
- (ii) he will not delay/stall the proceedings of the trial Court;
- (iii) he will not dispute his identity;
- (iv) he will have no objection if the prosecution evidence is recorded in his absence but in presence of his counsel;
- (v) he will appear before the trial Court as and when required by the trial Court and shall abide by any other condition which the trial Court may impose;

The present petition stands disposed of with liberty aforesaid.

31.8.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No