IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-46871-2018

Date of Decision:23.10.2018

Smt. Raj Kumari **.....Petitioner**

Versus

Punjab National Bank **.....Respondent**

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

Present: Mr. Nonish Kumar, Advocate,
for the petitioner.

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<u>HARI PAL VERMA, J.</u>

Petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of complaint No.3215/2017 dated 18.07.2017 (Annexure P-4) filed on 21.07.2017 under Sections 138/142 of the Negotiable Instruments Act (for short the “N.I. Act”) along with subsequent proceedings including the summoning order dated 21.09.2017 (Annexure P-5), wherein the petitioner has been summoned to face trial under Section 138 of the N.I. Act.

Briefly stated, the respondent-complainant filed a complaint under Sections 138/142 of the N.I. Act, wherein the cheque issued by the petitioner for an amount of ₹4,56,899/- in favour of the complainant was dishonoured on 23.05.2017 due to “Funds Insufficient”. Vide order dated 21.09.2017, the trial Court has summoned the petitioner-accused to face trial in the aforesaid complaint.

Learned counsel for the petitioner has argued that it was the son of the petitioner, who has availed loan for an amount of ₹5,70,000/- for the purchase of a new car. However, the petitioner being a co-borrower and in order to complete the formalities so as to avail loan and being the mother of the principal borrower, had issued the cheque in good faith. The respondent-complainant got many documents signed from the petitioner including some blank cheques as a security against the outstanding loan. The blank cheques were lying with the respondent-complainant and the loan amount began to be deducted in the form of ECS from the account of principal borrower. Thereafter, a dispute arose between the petitioner and her son Ashish Arora and accordingly, they are not on talking terms, as Ashish Arora indulged in bad company. Initially, son of the petitioner i.e. Ashish Arora had paid the installments regularly, but thereafter, due to his lavish way of life, he did not pay the installments on time. Since the principal borrower failed to repay the loan amount, the respondent-Bank initiated recovery proceedings against Ashish Arora under Securitization and Reconstruction of Financial Asset and Enforment of Security Interest Act, 2002 (SARFAESI). The respondent-Bank issued notice under Section 13(2) to the principal borrower Ashish Arora. So, once the proceedings are pending under the SARFAESI Act, filing of the present complaint against the petitioner is totally misuse of process of law. The summoning order passed by the trial Court does not disclose any offence and it being a non-speaking order, summong is not sustainable. He has relied upon a judgment of Gujarat High Court in **Shanku Concretes Pvt. Ltd. and others Versus State of Gujarat and another**, **2000(3) R.C.R. (Criminal) 258,** to contend that when the accused has issued a cheque for collateral security and not to discharge any existing debt, the case is of a civil nature.

I have heard learned counsel for the petitioner.

The cited judgment has no relevance to the facts and circumstances of the present case as in the case in hand, the cheque was never issued for collateral security, but it was issued by the petitioner from the joint account. The plea raised by learned counsel for the petitioner that the cheque was issued for security purposes, this Court under Section 482 Cr.P.C. cannot go into such a defence, as it is only during the trial, the petitioner has to establish this plea. Even otherwise, summoning order was passed on 21.09.2017, whereas the present petition has been filed on 20.10.2018 i.e. after more than one year. The petitioner could avail the remedy of revision against the order of summoning, but the same has not been invoked for the reasons best known to the petitioner. Therefore, no ground to quash the complaint No.3215/2017 dated 18.07.2017 (Annexure P-4) is made out.

Dismissed.

October 23, 2018 **(HARI PAL VERMA)**
seema **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No