

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

CRM-M-5529 of 2016 (O&M)

Decided on:-July 19, 2018.

Smt. Meenu Sehrawat and another

.....Petitioners.

Versus

Deepak Kumar.

.....Respondent.

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

Present:- Mr. D.K. Singal, Advocate
 for the petitioners.

Mr. Raman Sharma, Advocate
 for the respondent.

HARI PAL VERMA, J.

The petitioners have filed present petition under Section 482 Cr.PC for quashing of complaint No.3 dated 06.01.2015 filed by the respondent under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short, the Act) and Section 420 IPC.

Challenge has also been laid to the order dated 06.04.2015 passed by learned Judicial Magistrate 1st Class, Bathinda, whereby the petitioners have been summoned as accused to face trial in the aforesaid complaint.

Briefly stated, respondent Deepak Kumar (for short, the complainant) had filed a complaint under Section 138 read with Section 142 of the Act and Section 420 IPC against the petitioners-accused. As per the

complaint, the complainant is running his business under the name and style of M/s Admantra, Bharat Nagar, Bathinda and deals in the business of advertisement through hoardings. He is a sole proprietor of the firm having direct control and supervision over it. On the other hand, the accused/petitioner No.1 Meenu Sehrawat is partner/authorized signatory of petitioner No.2 firm and is running her business under the name and style of M/s Shagun Enterprises, Zirakpur, District SAS Nagar.

Petitioner No.1 had visited the office of the complainant on 03.09.2014 at Bathinda and gave a contract to the complainant to advertise the firm M/s Shagun Enterprises through hoardings for flourishing her business. Earlier also, the petitioner-accused had got some advertisement work done from the complainant for which a sum of Rs.1 lakh was paid. However, for the advertisement from which the dispute originated, a deal was finalized for a sum of Rs.1.25 lakh and the petitioner-accused was required to pay the amount within 25 days. Accordingly, on 04.09.2014, the petitioner-accused handed over the display material to the complainant and the complainant placed the hoardings of the firm of petitioner-accused at Sargam Complex Site of the complainant for 25 days. Again on, 30.09.2014, the petitioner-accused visited the office of the complainant and the parties jointly visited the site, where the petitioner No.1-accused issued a cheque No.387819 dated 30.09.2014 for a sum of Rs.1,25,000/- in favour of the complainant from her account No.65035151843 maintained by her with State Bank of Patiala, Sector-16, Chandigarh payable at par at all branches of State Bank of Patiala. It was assured that the cheque would be honoured.

Acting on the assurance given by petitioner No.1-accused, the complainant accepted the cheque, presented the same for encashment in his account with HDFC Bank, G.T. Road, Bathinda on 03.11.2014. The banker of the complainant further sent the aforesaid cheque to the banker of the petitioner-accused i.e. State Bank of Patiala, CCPC Branch, Bathinda for clearance, but the cheque remained dishonoured and was returned by the banker of the petitioner-accused to the banker of the complainant along with memo dated 04.11.2014 with the remarks "Payment Stopped by the Drawer".

After dishonouring of the cheque, the complainant issued a legal notice dated 26.11.2014 under Section 138 of the Act and Section 420 IPC calling upon the petitioner-accused to make payment of the dishonoured cheque amount. But despite the legal notice having been issued, the cheque amount was not paid. Resultantly, the complaint was filed.

Vide order dated 06.04.2015, learned Judicial Magistrate 1st Class, Bathinda summoned the petitioner-accused to face trial under Section 138 of the Act.

Aggrieved by the aforesaid summoning order, the petitioner-accused filed the present petition impugning the very complaint as well as the summoning order.

Learned counsel for the petitioner-accused has argued that apart from running the business of advertisement through hoardings, the complainant also provides manpower on contractual basis and vehicles on lease to different departments. After due deliberation, the complainant agreed to provide required manpower to the petitioner-accused and accordingly, the

cheque in question for a sum of Rs.1,25,000/- was given to the complainant as advance payment. But as the complainant did not provide the requisite manpower despite repeated requests, the payment of the cheque amount was stopped by issuing instructions to the bankers and, therefore, on presentation of the cheque, the same was returned unpaid with the remarks "Payment Stopped by the Drawer".

He has further contended that the petitioner-accused was willing to make the payment of the cheque in question, but the complainant did not accept the same with an oblique motive so as to extract more money and to harass petitioner No.1, who is a lady and runs her business from Mohali. He has drawn attention of this Court to the demand draft dated 06.02.2016 in the sum of Rs.1,25,000/- got prepared by the petitioner-accused in favour of the complainant.

On the other hand, learned counsel for the complainant has relied upon the judgment of Hon'ble Supreme Court in *M/s Meters and Instruments Private Limited and another Versus Kanchan Mehta* in *Criminal Appeal No.1732 of 2017 (arising out of Special Leave Petition [criminal] No.5441 of 2017)* to contend that the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid, and if there is no reason to proceed with the punitive aspect. Thus, the petitioner-accused is required to compensate the complainant, who has been litigating since long as the cheque amount has not been paid by the petitioner. Therefore, appropriate compensation is required to be paid to the respondent-complainant.

I have heard learned counsel for the parties.

The proceedings under Section 138 of the Act are criminal in nature with a civil liability in the background. The petitioner-accused has shown her inclination to make the payment of the cheque amount of Rs.1,25,000/- for which a bank draft was prepared in favour of the complainant. Photocopy of the said bank draft dated 06.02.2016 is already on record as Annexure P-3, but despite that offer having been made, the complainant has not accepted it. Rather, the petition has seriously been contested. The petitioner has filed the bank draft along with the present petition.

There is no dispute with the law laid down by Hon'ble Apex Court in ***Kanchan Mehta's case (supra)***. It has been held in that case that once the complaint is filed which is accompanied with the dishonoured cheque, the bank slip and affidavit, the Court ought to issue summons, but at the same time, the summons ought to indicate that the accused could make payment of specified amount in particular account before the specified date and resultantly, inform the Court and the complainant by e-mail. In case the accused has done so, he may not be required to appear if the Court is satisfied that the payment has duly been made and if the complainant has no valid objection. But in case the payment is not made and the accused is required to appear before the Court, his statement ought to be recorded forthwith and the case should be fixed for defence evidence unless the complainant's witnesses are recalled for examination.

The vital questions pertaining to the trial under the Act including the ones that have arisen in the present petition have duly been answered in ***Kanchan Mehta's case (supra)***, where a number of steps for speedy disposal of the case under the Act have been enshrined in the form of mandatory guidelines. The said guidelines, as mentioned in paragraph No.18 (ii) and (iii) of the cited judgment are reproduced as under:

- “(ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.*
- (iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.”*

In paragraph No.19 of the cited judgment, the Apex Court has held that when the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C.

In the case in hand, the petitioner-accused has offered the payment of cheque amount and in support thereof, a bank draft has been annexed, but the counsel for the complainant has argued that the complainant should adequately been compensated. His stress is towards the payment of

interest and cost over and above the cheque amount. In the present case, it was never the case of the complainant that he has given cash amount. It is only in return of the service extended by him, the complainant has raised his claim for which the petitioner-accused has issued the cheque of Rs.1,25,000/-.

Considering the fact that the bank draft of Rs.1,25,000/- was prepared by the petitioner No.1-accused in favour of the complainant on 06.02.2016, which is sufficient to indicate that she is inclined to make the payment of cheque amount as well as in the light of law laid down by Hon'ble Supreme Court in *Kanchan Mehta's case (supra)*, this Court finds that the present petition deserves to be accepted.

Accordingly, the present petition is allowed and the complaint dated 06.01.2015 (Annexure P-1) is quashed and the summoning order dated 06.04.2015 passed by learned Judicial Magistrate 1st Class, Bathinda is set aside, however, subject to payment of cheque amount of Rs.1,25,000/- along with additional amount of Rs.25,000/-, which would be treated as a composite compensation including the interest component or/and the cost.

It is made clear that in case the petitioner-accused fails to make payment of aforementioned amount of Rs.1,50,000/- to the complainant within two months from today, the present petition shall be deemed to have been dismissed.

July 19, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No