

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9677-2013 (O&M)

Date of decision: 13.12.2018

Suraj Bhan

.....Petitioner

versus

Balbir

....Respondent

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. K.S. Chawla, Advocate
for the petitioner.

None for the respondent.

Kuldip Singh, J. (Oral)

The petitioner has filed this petition under Section 482 Cr.P.C. for quashing the Complaint No.50978/2010 dated 15.09.2010 (Annexure P-17) under Section 138 of the Negotiable Instruments Act titled as ***Balbir vs. Suraj Bhan*** which is pending in the Court of learned Judicial Magistrate Ist Class, Chandigarh and summoning order dated 07.10.2010 (Annexure P-20), passed by learned Judicial Magistrate Ist Class, Chandigarh.

Respondent-Balbir had filed complaint under Section 138 of Negotiable Instruments Act before the learned Magistrate stating that accused took friendly loan of Rs.50,000/-. Again a loan of Rs.20,000/- was taken in February. In order to settle the loan, he issued two cheques i.e 585408 dated 12.08.2010 and 585409 dated 14.08.2010 for Rs.50,000/- and 20,000/- respectively. The cheques were dishonored on presentation with

the endorsement as “Insufficient Funds”..

Learned counsel for the petitioner contends that the case is false. In fact, the petitioner stood guarantor for one Om Parkash to whom the complainant had advanced the loan on interest. Said Om Parkash died. Since the petitioner handed over two cheques, the complainant start pressing him. He has also referred to the complaint dated 19.01.2010 (Annexure P-2) made by the complainant to the Chowki Incharge Maloya, Chandigarh, wherein he has mentioned about loan of Rs.50,000/- obtained by the petitioners and issuance of two blank cheques. In the statement dated 07.02.2010 (Annexure P-3) made during enquiry before the Police, the complainant stated that the loan was taken four years back and that two blank cheque Nos.585408 and 585409 were given by the accused. The complainant had even annexed the blank cheques with the complaint.

Learned counsel for the State submits that he had taken the copy of the blank cheques under RTI which shows that the cheques were blank and bear the signatures of the present petitioner and his Account number. Now the copy of cheques in question produced in this Court shows that the name of the complainant and the amount has been filled in figures and digits and are purportedly issued on 12.08.2010 and 14.08.2010 respectively. Learned counsel contends that it will show that the blank cheques which were lying with the complainant-respondent have been filled in for a sum of Rs.50,000/- and Rs.20,000/-.

In the complaint, the complainant had stated that loan was taken four years back and blank cheques were given at that time . Therefore even

assuming that the cheques were issued four years back, it is for the time barred debt and complaint under Section 138 of Negotiable Instruments Act is misuse of process of Court. Further it is proved that the blank cheques have been given as security and has been filled in for Rs.50,000/- and 20,000/-.

On behalf of the respondent none is present.

Earlier, the counsel for respondent was appearing but he suddenly stopped appearing and informed that the respondent is dead but LR's have not come on record.

Considering the above noted prima facie evidence, I am of the view that the blank cheques were filled in. The alleged loan was taken four years before 19.01.2010. The date was also filled in. It being so, complaint under Section 138 of the Negotiable Instruments Act, is nothing but misuse of process of Court.

In view of the above, Complaint No.50978/2010 dated 15.09.2010 (Annexure P-17) under Section 138 of the Negotiable Instruments Act titled **Balbir vs. Suraj Bhan**, and summoning order dated 07.10.2010 (Annexure P-20), passed by learned Judicial Magistrate Ist Class, Chandigarh are hereby quashed.

Accordingly, the petition is allowed.

(KULDIP SINGH)
JUDGE

13.12.2018
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Whether speaking/ reasoned:	Yes
Whether Reportable:	No