IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47807-2017
Decided on: 21.02.2018

Sunita Saini **.... Petitioner**

Versus

M/s. Srishti Motars Pvt. Ltd. **..... Respondent**

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Dr. Balram Singh, Advocate
for the petitioner.

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AUGUSTINE GEORGE MASIH, J (ORAL)

Petitioner has approached this Court by way of present petition under Section 482 Cr.P.C. for quashing of the complaint dated 19.03.2014, case No.6535/14 (Annexure P-14) and the summoning order dated 23.04.2014 (Annexure P-16).

2. It is the contention of the counsel for the petitioner that as per the complainant, the liability as has been mentioned in the complaint is of ₹2 crores and a sum of ₹50 lakhs have already been received by the complainant from the petitioner. The petition has been filed for dishonouring of cheque bearing No.039325 dated 27.01.2014 amounting to ₹2 crores which is over and above the amount due. He further contends that as the amount due is less than the cheque amount, the present petition cannot sustain and deserves to be dismissed. In support of his contention, he places reliance upon the order passed by the Delhi High Court in Crl. M.C. No.2224 of 2009 decided on 18.01.2010, titled as **"M/s. Alliance Infrastructure Project Pvt. Ltd. vs. Vinay Mittal"** and the judgment of the Kerala High Court in **"Basheer vs. Wheels Auto Finance, 2017(3) RCR (Criminal) 516**.

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3. When this Court had called upon counsel for the petitioner to refer to the complaint, it transpired that the loan amount alleged to have been taken by the complainant is ₹3 crores on 31.01.2012 and in pursuance thereto, a cheque bearing No.039325 dated 27.01.2014 amounting to ₹2 crores drawn on ICICI Bank Limited, Sonipat Branch was issued. When the same was presented, it was dishonoured with the remarks "Funds Insufficient". In the complaint, there is not a word mentioned with regard to the complainant having received any amount in discharge of the loan amount of ₹3 crores what to say ₹50 lakhs as asserted by the counsel. The statement of the counsel for the petitioner is, therefore, found to be totally incorrect on the basis of the complaint.

4. Further there is a challenge to the summoning order. A perusal of the same would also indicate that the Court has properly appreciated the allegations in the complaint and thereafter issued notice to the petitioner vide order dated 23.04.2014 (Annexure P-16). Therefore, both the complaint and the order summoning the accused-petitioner cannot be faulted with.

5. The arguments of the counsel for the petitioner is totally misplaced as the judgments on which reliance has been placed by the counsel for the petitioner, i.e. the judgment of the Delhi High Court in M/s. Alliance Infrastructure Project Pvt. Ltd. (supra) was based upon the peculiar facts and circumstances of the said case and the pleadings therein which could not be attracted to the present case. In the judgment of the Kerala High Court in Basheer's case (supra), again the Court had proceeded to consider the explanation to Section 138 of the Negotiable Instruments Act and had come to the conclusion that there must be an legally enforceable debt or other liability and since in that particular case, the cheque amount exceeded the liability, therefore, it was said that the proceeding under Section 138 of the Negotiable Instruments Act could not be initiated. This judgment also, therefore, would not be of any help to the petitioner.

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6. Having considered the contention made by learned counsel for the petitioner which was with an intent to mislead the Court and also keeping in view the fact that the petitioner has now approached the Court by filing the present petition after a period of more than three years when the proceedings are in progress before the trial Court and the case is fixed for the defence evidence, it can safely be concluded that the petitioner has approached this Court with a malafide intention to delay the proceedings before the trial Court so that the same cannot be concluded.

7. Keeping in view the conduct of the petitioner and the intent of the petitioner and further the same being devoid of any merit, the present petition stands dismissed with cost of ₹50,000/- to be paid to the complainant before the trial Court.

(AUGUSTINE GEORGE MASIH)
JUDGE

21.02.2018
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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