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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 5042/2017

HARLEEN KAUR

..... Petitioner

Through: Mr. Abhinash K. Mishra, Adv.
versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondents

Through: Mr. Izhar Ahmad, APP for State/R-1.
Mr. Gurmeet Singh Ahuja, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **24.07.2018**

By this petition under Section 482 of the Code of Criminal Procedure, 1973, petitioner has prayed for quashing of complaint case being no. 536004 of 2016 pending before the learned Metropolitan Magistrate, Delhi.

The complaint case has been filed by respondent no.2 against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act) in respect of a dishonoured cheque no. 368379 dated 17/10/2013 for ₹2,48,260/- drawn on Punjab & Sind Bank, E/C S.S. Mota Singh School, Guru Harkrishan Nagar, Paschim Vihar, New Delhi issued by the petitioner. As per the complaint, the petitioner and her husband were members of chit groups business run by the respondent no. 2. They were allotted different ticket numbers, that is, S-64A/15, S-61A/9, S-60A/9, S-

63A/18, S-61/13 and S-59/8 for different amounts. Upon being held successful in the chits petitioner and her husband were given chit price monies. As per the chit business, petitioner and her husband were to pay subscription of chit instalments for the complete chit period. Petitioner did not pay the instalments in time resulting in accumulation of chit instalments to the tune of ₹6 lacs. In order to discharge part liability petitioner issued aforesaid cheque which was dishonoured on presentation to the banker with the remarks 'funds insufficient'.

Learned counsel for the petitioner has contended that respondent no.2 had filed a complaint case 556/1/2007 against the petitioner and her husband earlier also for ₹5 lacs due and outstanding against chit number S-64A/15. In the said complaint case, respondent no.2 had alleged that petitioner had issued cheque no. 368375 dated 13/09/2007 for ₹2,90,940/- drawn on Punjab & Sind Bank, E/C S.S. Mota Singh School, Guru Harkrishan Nagar, Paschim Vihar, New Delhi to clear the liability of the chit instalments in the said chit group. During the pendency of complaint case, a settlement was arrived at and petitioner paid the settled amount, accordingly, respondent no.2 withdrew the said complaint case. In the present case also, chit number S-64A/15 is involved, thus, present complaint is not maintainable. In fact,

respondent no.2 had filed six cases in respect of the chit numbers which are involved in the present complaint case and all the six cases were later on withdrawn in view of settlement. Thus, present complaint in respect of the same chit number is nothing but an abuse of process of law and is liable to be quashed.

Per contra, learned counsel for respondent no.2 submits that settlement arrived at in the earlier complaint case was in respect of the dishonoured cheque involved in the said complaint case. The said cheque was issued towards the part payment of the outstanding instalments in the chit number S64A/15. The entire liability was not wiped out as the earlier complaint was only with regard to the cheque involved in the said complaint case issued towards the part liability. In the present case, petitioner has issued the cheque towards the part payment of the total outstanding amount of ₹6 lacs in all chits, thus, withdrawal of earlier complaint has nothing to do with the present complaint case. The present complaint has been filed in respect of a dishonoured cheque issued by the petitioner which was not the subject matter of the earlier complaint cases.

A bare perusal of earlier complaint makes it clear that the cheque involved in the said complaint case was not towards the clearing of entire

outstanding amount of the chit instalments in all the chits. The cheque was issued only to clear the part liability of the amount which was due and payable towards the outstanding installemnts in chit number S-64A/15. In the present complaint case, a categorical assertion has been made that ₹6 lacs was due in all the chit numbers and to clear the part liability petitioner had issued the cheque in the year 2013. There are allegations and counter allegations which can be resolved only after trial.

In the above facts, it cannot be said that filing of the second complaint in respect of a particular chit will result in abuse of process of law. For the foregoing reasons, I do not find any justification to quash the present complaint. Petition is dismissed with costs of ₹15,000/- to be paid by the petitioner to respondent no.2 before the trial court. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

JULY 24, 2018

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