

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19559-2016 (O&M)
DATE OF DECISION:-01.03.2019

M/S FASHION MARK

...PETITIONER...

V.

ALOK GUPTA AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Akshay Kumar Jindal, Advocate,
for the petitioner.

Mr. Rahul Katoch, Advocate for
Mr. Vipul Dharmani, Advocate,
for the respondents.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing order dated 12.01.2016 (P-3) of trial court, whereby, complaint filed by the petitioner under Section 420 IPC, was dismissed.

In nutshell, petitioner filed a complaint against respondents under Section 138 of the Negotiable Instruments Act (for short, "Act") read with Section 420 IPC (P-1), wherein, after recording preliminary evidence, respondents were summoned only under Section 138 of the Act, rejecting the plea of petitioner under Section 420 IPC, vide order dated 12.01.2016 (P-3).

Learned counsel for the petitioner contends that there was specific pleading of the petitioner in the complaint (Annexure P-1) about committing of cheating by respondents in conspiracy conjointly.

Therefore, trial court ought to have summoned respondents under Section 420 IPC also. Since, both the offences under Section 138 of the Act and 420 IPC are altogether distinct, therefore, the respondents could have been charge sheeted and summoned under Section 420 IPC and Section 138 of the Act as well.

On the other hand, learned counsel for respondents refuting the above submissions and pleading the legality and validity of the summoning order, contends that simply levelling allegations of cheating in the pleadings does not, in itself, prove the commission of offence under Section 420 IPC.

Having given thoughtful consideration to the rival submissions, this Court finds instant petition completely devoid of any merit for the reasons to follow:-

1. The dispute in the instant case revolves around the fact that respondents had purchased some articles from the petitioner, who is running a garment shop, against the cheque in question of the account of respondent No.2 duly signed by respondent No.1 her husband. Therefore, at the most, it cannot be said that respondents did not pay the sale price of the goods, if any, which they had allegedly purchased from the petitioner against issuance of a cheque not duly signed by a authorized signatory. This very fact can be very well dealt with by the trial court in a complaint under Section 138 of the Act. Therefore, respondents have rightly been summoned only under Section 138 of the Act only. Even otherwise, to

prove ingredients of cheating under Section 420 IPC, fraudulent and dishonest inducement of a person by deceiving him, is required to make him agree to deliver any property, which is not prima facie proved against the respondents.

I have gone through impugned order dated 12.01.2016, and find no illegality or infirmity in the same.

Hence, the instant petition is dismissed.

01.03.2019

sonika

(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No