

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20570-2018
Date of Decision: July 22, 2019

Sunil Meadh

... Petitioner

Versus

H.D.F.C. Bank Pvt.Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Mandeep Kaushik, Advocate,
for the petitioner.

Mr. A.D.S. Sukhija, Advocate,
for the respondents.

Shekher Dhawan, J.

Present petition under Section 482 Cr.P.C. is for quashing of complaint No. COMA/4921/2016 dated 20.05.2016 titled as “HDFC Bank Pvt. Ltd. and others vs. Meadh Sales Corporation and another” filed by respondent under Section 138 of Negotiable Instruments Act and summoning order dated 23.05.2016 passed by learned Magistrate.

Learned counsel for the petitioner contended that petitioner is undisputedly guarantor of the loan advanced by H.D.F.C. Bank and during re-payment, loanee issued cheque for a sum of Rs.90,00,000/- which was dishonoured and trial Court passed the order for summoning of accused persons which include loanee as well as the present petitioner who is nonelse but a guarantor. He does not have any legal liability or criminal liability under Section 138 of the Negotiable Instruments Act in his capacity as guarantor.

Learned counsel representing the respondents opposed the arguments advanced by learned counsel for the petitioner on the ground that the loanee as well as present petitioner are liable to face the trial.

Having considered the above facts that there is no dispute on the fact that complaint was filed under Section 138 of Negotiable Instruments Act and as per provisions of the Negotiable Instruments Act, it is ample clear that the liability is against the drawer of the cheque only and not the guarantor as in the present case and the trial Court has not considered this aspect while passing the impugned order dated 23.05.2016 whereby the petitioner was also summoned as an accused. As such, present petition is allowed and the summoning order qua the petitioner only stands quashed. However, it is made clear that the case shall proceed against the loanee on the basis of the summoning order dated 23.05.2016.

July 22, 2019
vkd

(Shekher Dhawan)
Judge

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No