IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.22375 of 2014 (O&M)
Date of decision: 23.04.2019

Amanjot Singh

....Petitioner

Versus

Kulwant Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Manohar Lall, Advocate
for the petitioner.

Mr. P.S. Sarna, Advocate
for the respondent.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for quashing of complaint dated 22.11.2007 (Annexure P3) as well as for setting-aside the summoning order dated 15.02.2008, vide which the petitioner was summoned to face the trial under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act').

Brief facts of the case are that the petitioner purchased a Honda City car bearing registration No.CH01-V-1896 on 17.06.2007 from the complainant. It is further stated in the complaint that Rs.1,85,000/- was fixed as price of the car on 17.06.2007. Out of the aforesaid amount, Rs.5,000/- was paid in cash by the petitioner and a cheque of Rs.1,80,000/- dated 18.06.2007 was handed over to the respondent, which was duly signed by one Bhupinder Kaur, who is stated to be wife of the petitioner. The possession of the car was given to the petitioner on the same day i.e. 17.06.2007. Thereafter, when the respondent presented the cheque for getting the same encashed on 20.06.2007 in the Chandigarh State Co-operative Bank at village Dadu Majra, U.T., Chandigarh, the same was returned by the Bank with the remarks “Payment stopped by drawer” vide memo dated 22.06.2007. After disclosing the said factual position to the respondent/complainant, the petitioner assured the complainant that he should present the cheque again and the same would be honoured by the bank. Thereafter, again the complainant/respondent presented the cheque in his bank on 06.10.2007 but the same was again returned with the remarks “Payment stopped by drawer” vide memo dated 06.10.2007. Thereafter, a legal notice dated 20.10.2007 was issued to the petitioner by the complainant through his counsel but even thereafter, the petitioner failed to give the money to the complainant and later, the complainant filed a complaint dated 22.11.2007 under Section 138 of the N.I. Act before the trial Court.

The trial Court summoned the petitioner vide impugned summoning order dated 15.02.2008 and thereafter, the petitioner moved an application for discharge, however, the same was dismissed vide order dated 05.12.2013. The present petition has been filed challenging the aforesaid orders.

It is worth noticing here that this petition is pending since 2014 and the proceedings before the trial Court were stayed on 08.07.2014, therefore, this case was taken up in the Urgent List.

Counsel for the petitioner has submitted that as per the allegations in the complaint, the petitioner/accused had purchased a

Honda City car bearing registration No.CH01-V-1896 on 17.06.2007 and it was agreed that an amount of Rs.1.85 lacs will be paid as a price of the car on 17.06.2007 and the possession of the car was handed over to the petitioner on the same day i.e. 17.06.2007 itself. The petitioner gave a cheque of Rs.1.80 lacs on 18.06.2007, which on presentation was returned with the remarks “Payment stopped by drawer” vide memo dated 22.06.2007. The cheque was again presented on 06.10.2007 and again returned with the remarks payment stopped by the drawer vide memo dated 06.10.2007, which was received by the complainant on 08.10.2007 and thereafter, a legal notice was issued on 20.10.2007 and the complaint was filed on 2.11.2007.

Counsel for the petitioner has further submitted that the cheque in dispute was not signed by the petitioner but the same was signed by Bhupinder Kaur and therefore, in the absence of Bhupinder Kaur being arrayed as an accused, the complaint is not maintainable.

Counsel for the petitioner has relied upon the judgment ***“Mrs. Aparna A. Shah vs M/s. Sheth Developers Pvt. Ltd. and another”*, 2013(3) RCR (Criminal) 686**, to submit that it has been held by the Hon'ble Supreme Court that under Sections 138 and 141 of the N.I. Act, if a cheque is drawn by the accused from the joint account, it is only the drawer of the cheque, who could be made an accused in a proceedings under Section 138 of the N.I. Act.

Counsel for the petitioner has next argued that notice has been given after a lapse of the mandatory period. It is further submitted that when the cheque was dishonoured for the first time, no notice was given and, therefore, the complaint is not maintainable.

In reply, counsel for the respondent has submitted that the petitioner has played a fraud with the complainant and on that account, the complaint was filed under Section 138 of the N.I. Act read with Section 420 IPC. It is further submitted that the complaint was filed in the year 2007 and the petitioner avoided appearance for a period of 06 years and appeared only on 23.07.2013 when he moved an application for discharge on 14.10.2013, which was dismissed by the trial Court vide order dated 05.12.2013.

Counsel for the respondent has further submitted that in the application for discharge, the petitioner has admitted that he had given an account payee cheque against the sale consideration. For a reference para 3 of this application is reproduced as under:-

> ***"3.*** *That accepting the facts as revealed by the complainant to be true and correct that the accused/applicant, entered into an receipt dated 17.6.07 with the complainant which was executed in the presence of above mentioned persons. It was upon execution of the receipt dated 17.6.07 by the complainant in favour of the accused/applicant, that the letter delivered an account payee bearing No.035017 dated 18.06.07 in favour of the complainant for sum amount of Rs.1,85,000/- (One lac eighty five thousand only) against the settled consideration sum/amount as agreed and accepted upon and the balance sum/amount was retained to be paid latter in the time upon the transfer of the papers pertaining to the motor-vehicle as referred above are affected by the complainant in favour of the accused/applicant or in his or her name of the person from the registered owner of the motor-vehicle but having been issued and delivered by the mother of the accused/applicant."*

Counsel for the respondent has, thus, submitted that the aforesaid fact has not been disclosed in the present petition. Counsel for the respondent has relied upon a receipt dated 17.06.2017 cite by the petitioner, in which he acknowledge the sale and deliver of the physical possession of the vehicle to the petitioner, who has also given a disputed cheque of Rs.1.80 lacs. It is further submitted that till date, the petitioner is in possession of the car and he has not paid the amount.

Counsel for the respondent has relied upon the impugned complaint (Annexure P3) wherein the following prayer was made:-

> *"In view of the above mentioned submissions, it is respectfully prayed that the accused may kindly be summoned and punished under Section 138 etc. of Negotiable Instruments Act read with Section 420 and other relevant provisions of IPC in the interest of justice and equity."*

Counsel for the respondent has, thus, submitted that even if the offence under Section 138 of the N.I. Act is not made out, the petitioner is liable to be prosecuted under Section 420 IPC as the intention of the petitioner to cheat the complainant is apparent on the date when the agreement of sale was executed on 20.06.2007, when the petitioner obtained a receipt from the complainant/respondent for full and final payment of Rs.1,85,000/-, out of which an amount of Rs.1,80,000/- was paid by way of a cheque dated 18.06.2007, knowingly that the same was issued from the account of Bhupinder Kaur, wife of the petitioner and also knowingly that the same will be dishonoured, therefore, the petitioner on such representation allured the complainant to part away with the car and later on, the cheque was dishonoured and therefore, the intention of the petitioner to cheat the complainant is clearly made out from the conduct of the petitioner.

After hearing the counsel for the parties, I find that there is no dispute with regard to the judgment of the Hon'ble Supreme Court in ***Mrs. Aparna's case (supra)*** that only a person from whose account the cheque is drawn, could be made an accused in the proceedings under Section 138 of the N.I. Act.

However, on a careful perusal of the complaint, the application for discharge filed by the petitioner especially in para 3 of the application where the petitioner has admitted that he entered into an agreement for purchase of a car from the complainant and had issued the disputed cheque for an amount of Rs.1,80,000/-, which was dishonoured, the trial Court while issuing the summoning order has not looked into this aspect of the case, if the offence under Section 420 IPC is made out. Needless to say that the petitioner/accused knew on the date of issuance of the cheque that it is issued from the account of his wife Bhupinder Kaur and the same will be dishonoured as there was no sufficient funds. The complainant/respondent believing the offer made by the petitioner to be a genuine offer, handed over the car to the petitioner and it is undisputed as admitted by counsel for the petitioner that the petitioner is still in possession of the car and using it for the last 12 years.

Even on a Court query, whether the petitioner is still ready to make the payment of Rs.1,80,000/- (without interest), the reply was in negative, therefore, the matter needs to be remanded back to the trial Court in order to pass afresh summoning order by assessing the evidence, if the offence under Section 420 IPC in the given circumstances is made out against the petitioner or not.

In view of the above, this petition is ***disposed of*** and the ***matter is remanded back to the trial Court*** to proceed further in accordance with law.

The parties through their counsel are directed to appear before the trial Court on or before ***20.05.2019***.

(ARVIND SINGH SANGWAN)
JUDGE

23.04.2019
yakub

Whether speaking/reasoned Yes/No

Whether reportable Yes/No