

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i) CRM No.M-31534 of 2013 (O&M)

Parmod Kumar

...Petitioner

VERSUS

Jaspreet Singh

...Respondent

(ii) CRM No.M-31739 of 2013 (O&M)

Parmod Kumar

...Petitioner

VERSUS

Amarjit Singh

...Respondent

Date of Decision: March 12, 2019

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Bains and Mr.Naveen Kashyap, Advocates
for the petitioner.

Mr.Kuldip Singh Chaudhary, Advocate
for the respondents.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as point
for determination in these cases is the same.

The petitioner has filed these petitions under Section 482
Cr.P.C. for quashing of complaints No.38-RT and 41-RT, both dated
30.05.2012 titled as 'Jaspreet Singh vs. Parmod Kumar' and 'Amarjit Singh

vs. Parmod Kumar' respectively, under Section 138 of the Negotiable Instruments Act and summoning orders dated 13.03.2013 passed by learned JMIC, Rajpura, along with all consequential proceedings.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petitions.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that complaints were filed by the complainants-respondents against the accused-petitioner under Section 138 of the Negotiable Instruments Act, in which, it is mainly stated that accused agreed to purchase land measuring 110 bighas 11 biswas out of total land measuring 285 bighas from the complainants. At the time of agreement to sell, accused paid ₹90 lakh as earnest sale price, ₹10 lakh was paid in cash and accused handed over cheques of ₹30 lakhs each to both the complainants, which on presentation for encashment, were returned back dishonoured with the remarks 'funds insufficient'.

At the time of arguments, learned counsel for the petitioner argued that there is nothing in the complaint that what has happened to the agreement. The complainants were not owners on the date of execution of agreement. In the civil suit, a decree has been passed against the complainants and now, RSA is pending before this Court. It is further argued that FIR has also been got recorded against the complainants under Section 420 IPC. He also argued that civil suit for recovery of ₹46 lakhs filed by present petitioner is pending against the complainants.

On the other hand, learned counsel for the respondents argued

total land regarding which decree was passed against the complainant but on filing appeal before learned District Judge, that decree has already been set aside and the matter was decided in favour of the complainants. He also argued that RSA is pending before this Court but there is no stay and the complainants are fully competent to execute the sale deed on the basis of the agreement. Learned counsel for the respondents also argued that admittedly, cheques given by present petitioner have been dishonoured and legal notices have been served to pay the amount of the cheques but the amount has not been paid and the complaints have been filed within the statutory period. He further contended that findings of facts are to be given by the trial Court and in the quashing petition, these findings cannot be given.

First of all, I find that in the quashing petition, this Court is not to give the finding of fact, as it is to be given on the basis of evidence and there being no evidence before this Court, therefore, finding of fact is to be given by learned trial Court first, on the basis of evidence produced before it. Further, I find that in the quashing petition, the defence or documents relied upon by the accused-petitioner, cannot be looked into. The defence is to be seen at the appropriate stage by the trial Court.

Admittedly, the cheques have been issued by the petitioner, which have been dishonoured and legal notices have been served and then, complaints have been filed within statutory period. Nothing has been shown that any of the necessary ingredient of Section 138 of the Negotiable Instruments Act is missing or not complied with. Otherwise also, under Section 139 of the Act, presumption regarding liability is there, which is to

be rebutted by the accused by leading probable defence.

In view of the above facts and circumstances, I find that there is nothing from which it can be held that filing of complaints in the present case are abuse of process of law and amount to miscarriage of justice.

Therefore, finding no merit in both the petitions, the same are dismissed.

March 12, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No