IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35414-2017(O&M)
Date of Order: 24.07.2019

Sandeep Khanna

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S.Rai, Sr. Advocate, with
Mr. G.S.Bedi, Advocate and
Ms. Rashleen Virk, Advocate,
for the petitioner.

Ms. Rajni Gupta, Sr. DAG, Punjab

Mr. Parvez Chugh, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J.

Petition under Section 482 of the Code of Criminal Prodedure, 1973 has been filed seeking quashing of complaint as also the orders passed by the Judicial Magistrate Ist Class, Kapurthala, summoning petitioner-accused vide order dated 08.08.2014, registered as NACT No.338 of 2016 under Section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as 'the NI Act').

Quashing has been sought at preliminary stage when petitioner has only been summoned.

Learned senior counsel appearing for the petitioner has submitted that in view of notice dated 05.04.2015 issued by the complainant-respondent no.2, no case is made out under Section 138 of the NI Act. Relevant part of the notice is extracted as under:-

> "*That your firm failed to repay the bank loan in time and has been declared as defaulter by the bank and even my client has received notice regarding the same from bank and when my client approached you and demanded from you to secure my client for the contingent losses which may be caused to my client, then to discharge your legal liability you have issued one cheque No.275172 dated 24.03.2014 of an amount of Rs.1,40,00,000/- (One crore and forty lac only) of Andhra Bank 481, R.K.Puram Branch, New Delhi. At the time of issuance of the said cheque, you assured my client that whenever this Cheque will be presented for its encashment, the same will be encashed.*"

Learned senior counsel for the petitioner contends that the offence under Section 138 of the NI Act is made out only if the cheque has been issued in discharge of any existing debt or other liability. He, hence, submits that the complainant has to show that there is legally an enforceable debt or other liability subsisting on the date the cheque was drawn. He, hence, submits that from the reading of the notice extracted above that the cheque was issued only to secure contingent losses which may be caused to the complainant and therefore, the cheque in question was not issued for existing or past adjudicated liability which is "sine qua non" for bringing an offence under Section 138 of NI Act. In support of his argument, he relies upon a a judgment ***M/s Indus Airways Pvt. Ltd. and others vs. M/s Magnum Aviation Pvt. Ltd. and another, (2014) 12 SCC, 539.***

Learned counsel has stressed upon para 13 of the judgment which is extracted as under:-

> *13. The explanation appended to Section 138 explains the meaning of the expression 'debt or other liability' for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an exiting debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of*

drawal of cheque, there was no existing liability.

On the other hand, learned counsel appearing for respondent no.2 has submitted that the cheque was issued in recognition of existing liability. He drew attention of the Court to the order passed by Debut Recovery Tribunal-1, Delhi, directing respondent no.2-complainant to pay an amount of Rs.16,43,69,290/- together with pendente lite and future interest vide judgment dated 25.07.2018.

Whenever quashing of criminal proceedings, may be arising from an FIR or criminal complaint is filed, the petitioner is required to show that even from the bare reading of the complaint, no case is made out. In the present case petitioner, although, made attempt, however, in the considered opinion of this court has miserably failed. At this stage, it would not be appropriate for this Court to express any opinion on the merits of the case lest it may prejudice the case of any of the party. Quashing of a criminal proceedings in exercise of power under Section 482 Cr.P.C. is to be resorted to only in rare and exceptional cases. If we read the judgment passed by the Hon'ble Supreme Court carefully in the case of ***M/s Indus Airways Pvt. Ltd. and others (supra)***, it is apparent that Hon'ble Supreme Court was dealing with a situation where one party had placed two purchase orders for supply of certain aircraft parts. Against such purchase orders, two post dated cheques were issued. Later on, the purchasers had cancelled the order placed and requested the supplier to return both the cheques. The supplier responded to the letters sent by the purchaser, asking as to when the supplier should collect the payment. In these circumstances, the Hon'ble Supreme Court held that the cheque was not issued for legally enforceable debt or other liability subsisting on the date the cheque was drawn. The court opined that the cheque has to be in discharge of the existing or past adjudicated liability to bring the offence within the purview of Section 138 of the NI Act.

In the present case, facts are entirely different. It is not the case of the petitioner that on account of re-payment of loan amount, complainant has not been made liable to pay the amount. Rather, the judgment passed by learned Debt Recovery Tribunal establishes the fact that the complainant-respondent no.2 has become liable to pay the amount.

In view of the aforesaid, this court does not find any force in the argument of learned senior counsel for the petitioner.

Hence, the petition is dismissed.

However, the observations made by this Court while deciding the petition shall not be taken as expression on the merits of the case and the trial Court would proceed to decide the complaint independently.

July 24, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No