

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

Crl. Misc. No. M-36615 of 2018 (O&M)

Date of decision: November 06, 2019

Veena Sharma

.. Petitioners

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. H.S. Saggu, Advocate
for the petitioners.

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

Mr. Sanjeev Goyal, Advocate
for respondent No.2.

SURINDER GUPTA, J.(Oral)

Petitioner has filed this petition under Section 482 Code of Criminal Procedure seeking quashing of Complaint No.NACT/559 of 2018 dated 23.02.2018 (Annexure P/1) titled as *Gupta Smelters Private Limited Vs. Veena Sharma and Anr*, pending before Judicial Magistrate 1st Class, Sangrur, summoning order dated 23.02.2018(Annexure P-2) and all subsequent proceedings arising therefrom.

Complainant-respondent No.2 filed a complaint under Section 138 of Negotiable Instruments Act for dishonour of cheque dated 27.09.2017 presented in bank for payment on 26.12.2017. The cheque was allegedly issued for payment of ₹27,58,458/-. As per the legal notice issued before filing of the complaint, petitioner had issued this cheque towards his liability for the amount mentioned in the cheque.

This fact is not disputed that after the issuance of cheque and notice, following payments were made in the account of respondent No.2-complainant by the petitioner:-

Sr. No.	Date	Payment
(i)	16.11.2017	₹15,00,000/-
(ii)	19.12.2017	₹5,00,000/-
(iii)	20.12.2017	₹10,00,000/-
(iv)	20.12.2017	₹5,00,000/-
(v)	21.12.2017	₹10,00,000/-
(vi)	08.01.2018	₹5,00,000/-
(vii)	23.01.2018	₹2,00,000/-
(viii)	02.02.2018	₹2,73,778/-

Statement of account, copy of which has been placed on file as Annexure P-6 shows that between 13.06.2017 and 02.02.2018, a sum of ₹54,73,778/- was deposited in the account of respondent No.2-complainant.

Learned counsel for respondent No.2 has not disputed the deposit of aforesaid amounts on the dates as mentioned in the statement of account and has argued that even after adjusting this amount, a sum of ₹27,61,658/- is due to the petitioner towards the price difference and interest over the overdue payment.

The question, which arises for consideration in this petition is as to whether the complainant could file the complaint despite the fact that after the issuance of alleged cheque on 27.09.2017, the petitioner had made payment in the account of complainant, which is more than the cheque amount. From the date of alleged issuance of cheque and till date of its presentation, ₹45,00,000/- had been paid in the account of respondent No.2-complainant, as such, this plea in the complaint that the petitioner was asked

to make the payment of the cheque but he failed, on the face of it is not

credible. Even after the date of presentation of cheque, deposits were made in the account of respondent No.2.

From the submission of learned counsel for respondent No.2-complainant, it appears that there is some dispute about amount due towards price difference of goods supplied and due interest amount towards petitioner for which the respondent No.2-complainant has a separate remedy to avail. The payments made by the petitioner after the alleged date of issuance of cheque till the filing of the complaint, are to be firstly adjusted towards the payment of cheque amount. In the notice sent by the complainant, there is no averment that cheque had been issued towards the part payment of the due amount.

Keeping in view the above facts, I am of the considered opinion that filing of complaint under Section 138 of Negotiable Instruments Act by complainant-respondent No.2 is sheer misuse of the process of Court. This petition has merits and the same is allowed. Complaint No.NACT/559 of 2018 dated 23.02.2018 (Annexure P/1) titled as *Gupta Smelters Private Limited Vs. Veena Sharma and Anr*, pending before Judicial Magistrate 1st Class, Sangrur, summoning order dated 23.02.2018 (Annexure P-2) and all subsequent proceedings arising therefrom are quashed qua the petitioner.

(SURINDER GUPTA)
JUDGE

November 06, 2019
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No