IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48402-2018
DATE OF DECISION:-30.01.2019

RAJIV KUMAR ...PETITIONER...

V.

AXIS BANK LTD. ...RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. Sharmila Sharma, Advocate,
for the petitioner.

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RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing complaint No.982 of 2015 dated 05.10.2015, titled as ***"Axis Bank Ltd. vs. Mr. Rajiv Kumar"*** under Section 138 of the Negotiable Instruments Act, 1881 (for short' "Act") (P-1) and summoning order (P-2), whereby he has been summoned to face trial.

Briefly, petitioner obtained term loan of ₹18 lacs under the scheme of Kissan Credit Card from the respondent-Bank on interest @ 12% per annum on 18.03.2013 against mortgage of his land. However, he did not repay the said loan except ₹39,000/- in a span of more than 5/6 years. Therefore, finding no other option, respondent-bank filed a complaint under Section 138 of the Act against the petitioner for bouncing of his cheque bearing No.092291 dated 20.08.2015 for ₹20,37,435/- vide memo dated 20.08.2015.

Learned counsel contends that earlier respondent-bank had filed recovery proceedings before the Collector, which was dismissed in default on 25.10.2016 (P-5). Thereafter, respondent-Bank, in spite of, getting the same restored, filed a complaint under Section 138 of the Act against the petitioner. The petitioner moved a complaint dated 16.01.2018 (P-6) against respondent-bank, in which, inquiry was got conducted by Inquiry Officer/Naib Tehsildar, Gannaur, who specifically reported that a sum of ₹26,000/- was deducted by the bank, while lending loan to the petitioner in lieu of his mortgaged land and crops insured, but the bank did not do so. The land of the petitioner being merged in the river due to change of its flow and his crops also got damaged. Consequently, insurance company was liable to compensate the petitioner or to the respondent-bank against loan amount. Since, the respondent-bank committed fault of not ensuring the land and crop of the petitioner, therefore, petitioner can not be penalized for the fault of respondent-bank.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds instant petition completely devoid of any merit for the reasons to follow:-

1. The story put forth by the petitioner that his crop got damaged and his land, which he had mortgaged with the respondent-bank had merged in the river due to change of its flow, is completely concocted and false, inasmuch as, facts and circumstances show that the petitioner with deliberate intention to cheat and defraud respondent-bank, mortgaged his land, which used of often merge in the river due to change

of its flow intermittently may be every year, to usurp the loan amount and succeeded in doing so. The land mortgaged by the petitioner must have reverted back to him again in due course in the preceding years after rechange of course of water, but, he has concealed this fact from the respondent-bank.

On false plea taken by the petitioner, the complaint of respondent-bank under Section 138 of the Act, cannot be quashed.

Dismissed.

30.01.2019 **(RAMENDRA JAIN)**
sonika **JUDGE**

whether speaking/reasoned: Yes/No
whether reportable: Yes/No