IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23176 of 2020 (O&M)
Date of Decision: August 18, 2020

Mahesh Sharma

...Petitioner

Versus

Neelam Sharma

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Aman Sharma, Advocate
for the petitioner.

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JAISHREE THAKUR, J. (Oral)

1. The instant petition has been filed under Section 482 Cr.P.C. for quashing the Complaint No.COMA/3970/19 dated 16.12.2019 filed under Section 138 of the Negotiable Instruments Act, 1881 as well as summoning order dated 16.01.2020 passed by the Judicial Magistrate Ist Class, Ambala and all other consequential proceedings arising therefrom.

2. In brief, the facts of the case are that the petitioner and the respondent are real brother and sister. An agreement to sell dated 01.05.2018 was entered into between the parties for the sale of Plot No.3049, measuring 120 sq. yards situated at Adarsh Nagar, Nayagaon, District Mohali for a total consideration of ₹ 22.00 lacs. Thereafter, a supplementary agreement dated 12.07.2019 entered into between the parties and the petitioner had paid an amount of ₹ 3 lacs by way of cheque

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No.354345 dated 12.07.2019 to the respondent. Thereafter, the respondent appeared before the Sub Registrar, Tehsil Majri, SAS Nagar on 15.10.2019 and paid an amount of ₹ 2 lacs vide cheque No.000926 dated 15.10.2019 and the plot was registered in the name of wife of the petitioner. It is submitted that petitioner while preparing and organizing the documentation required for registration of the sale deed, found that he misplaced a blank signed cheque No.000929 from his cheque book issued by the ICICI Bank, Chandigarh. The petitioner immediately informed the ICICI Bank, Sector 36, Chandigarh and also got a DDR registered with the Chandigarh Police on 15.10.2019. It is alleged that petitioner was shocked when he came to know that the aforesaid cheque No.000929, which was misplaced, has been presented by the respondent on 16.11.2019 by filling an amount of ₹ 1 lac. It is submitted that the petitioner immediately called the respondent and requested her to return the cheque in question, however, respondent failed to return the cheque to the petitioner. Thereafter, the petitioner reported the matter to the SSP, Chandigarh, in which matter, the respondent appeared and made a statement that two cheques were given by the petitioner to the respondent amounting to ₹ 2 lacs and ₹ 1 lac respectively, however, the payment of cheque amounting to ₹ 1 lac given to her by the petitioner at the time of registration of the sale deed was stopped by the petitioner. Thereafter, a complaint under Section 138 of N.I. Act was filed by the respondent.

3. Learned counsel for the petitioner would argue that the learned JMIC, Ambala failed to appreciate that the agreement to sell dated 01.05.2018 was entered into between the parties for a total consideration of

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₹ 22.00 lacs and the petitioner had received the total sale consideration. So, there was no occasion for the petitioner to take any sort of friendly loan from the respondent, as such, the entire story concocted by the respondent in the complaint is totally false. It is argued that the complaint filed under Section 138 of N.I. Act is nothing, but an abuse of process of law. It is contended that no date, time, month and year has been mentioned in the complaint as to when the alleged amount has been taken by the petitioner. It is prayed that the complaint filed by the respondent as well as the summoning order passed by the JMIC, Ambala should be quashed being illegal and arbitrary.

4. I have heard learned counsel for the petitioner and with his able assistance, have gone through the pleadings of the case.

5. This court is of the considered view that all the pleas raised by the petitioner are matter of evidence and the same cannot be adjudicated in this petition seeking quashing of the complaint filed under Section 138 of Negotiable Instruments Act as well as the summoning order passed by the JMIC, Ambala. The petitioner will get an opportunity to set up all these pleas in his defence during the course of trial of the complaint before the JMIC, Ambala. The question whether the cheque in question has been misplaced from the petitioner or the petitioner has issued the same in lieu of the money received by him from his sister, can only be answered after both the parties led their respective evidence in support of their case.

6. Under these facts and circumstances of the present case, finding no merit in the instant petition, the same is hereby dismissed.

7. Needless to say, anything observed or said by this court is only

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for the purpose of deciding the instant petition and the same shall have no bearing on the merits of the case.

8. At this stage, counsel for the petitioner made a request that presence of the petitioner may be exempted before the trial court and he may be permitted to appear before the trial court through his counsel.

9. The request is acceded to limited to the appearance during the Covid-19 pandemic, subject to the petitioner's furnishing the requisite bail bond and surety bond before the trial court, if not already furnished. Thereafter, appropriate application may be filed before the trial court, who will decide the same on merits.

(JAISHREE THAKUR)
JUDGE

August 18, 2020
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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