**In the High Court of Punjab and Haryana at Chandigarh**

**CRM-M No. 52963 of 2018**
**Date of Decision: 07.2.2020**

Jaskaran Singh Dhillon ......Petitioner

Versus

Raman Kalia ......Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. V.K.Sandhir, Advocate
for the petitioner.

None for the respondent.

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**HARNARESH SINGH GILL, J. (ORAL)**

This petition has been filed for quashing of complaint No. NACT/512/2018 dated 17.1.2018 titled '*Raman Kalia ersus Jaskaran Singh Dhillon*' (Annexure P-6) and all the consequent proceedings arising therefrom, including the summoning order dated 16.2.2018 (Annexure P-7).

In the present case, respondent Raman Kalia had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) alleging that a friendly loan amounting to Rs. 1,50,000/- was advanced to the petitioner-accused for domestic purposes and in order to discharge his legal liability/debt, the petitioner had issued a cheque bearing No. 102010 dated 5.12.2017 amounting to Rs. 1,50,000/- drawn on Syndicate Bank, Branch Ranjit Avenue, Amritsar in favour of respondent-complainant. When the said cheque was presented for encashment, the same was return unpaid with remarks 'No Such Account'.

Thereafter, the respondent-complainant appeared as CW-1 and placed certain documents before the trial Court and vide order dated 16.2.2018 (Annexure P-7), the petitioner was summoned to face the trial. Thus, the present petition for quashing the complaint and the summoning order.

Notice of motion was issued on 26.2.2019 and proceedings before the trial Court were stayed. The respondent was duly served but he preferred not to appear for the reasons best known to him.

Nobody appeared on behalf of the respondent on 11.9.2019 nor on 13.12.2019 and the same is the position today. This Court has no option but to proceed with the case.

Learned counsel for the petitioner has argued that in reply dated 18.1.2018 (Annexure P-5) to the legal notice, it has been stated that neither the petitioner was having any account in Syndicate Bank, Ranjit Avenue, Amritsar nor he has issued the alleged cheque. He has relied on the judgment of Hon'ble Supreme Court of India in ***Jugesh Sehgal versus Shamsher Singh Gogi 2009 (3) R.C.R. Criminal) 712***. It is further argued that the respondent has filed the complaint on the basis of cheque No. 102010 dated 5.12.2017 rather it is not a cheque but an withdrawal slip which is clear from Annexure P-4.

I have heard the learned counsel for the petitioner and with his able assistance, have gone through the paper book.

Admittedly, as per the complaint itself, the cheque in question was returned with remarks 'No Such Account'.

To meet this argument, it is relevant to reproduce Section 138 of the Act.

> ***138- Dishonour of cheque for insufficiency, etc., of funds in the account.*** *— Where any cheque drawn by a person on*

*an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—*

*(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

*(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

*(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."*

Thus, from Section 138 of the Act it is clear that following ingredients are required to be fulfilled:-

*(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;*

*(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;*

*(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;*

*(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*

*(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*

*(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;*

It is clear that the cheque in question was issued from an account which was non-existent. Furthermore, it is not a cheque rather it is an withdrawal slip bearing No. 102010 dated 5.12.2017 as is evident from Annexure P-4.

The Apex Court in para No. 17 in ***Jugesh Sehgal***'s (supra) case has held as under:-

*"As already noted hereinbefore, in para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non-existent on the day it was issued or that the account from where the cheque was issued "pertained to someone else". As per complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of*

> *the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant, would be an abuse of the process of the Court. In our judgment, therefore, the decision of the High Court cannot be sustained."*

Keeping in view the above facts and circumstances, the petition is allowed. Complaint bearing No. NACT/512/2018 dated 17.1.2018 titled '*Raman Kalia versus Jaskaran Singh Dhillon*' (Annexure P-6) and all the consequential proceedings, arising therefrom including the summoning order dated 16.2.2018 (Annexure P-7), are quashed.

**(HARNARESH SINGH GILL)**
**JUDGE**

**February 07, 2020**
**Gurpreet**

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