IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-27736-2019
Date of Decision: 15.01.2020

Sumesh Chadha ....Petitioner

Versus

Yogesh Jain ....Respondent

Present: Mr. Rakesh Bhatia, Advocate, for the petitioner.

Harnaresh Singh Gill, J.

By way of the present petition, the petitioner seeks quashing of the complaint bearing COMA No.753 dated 14.01.2019 (Annexure P.1) and summoning order dated 27.02.2019 (Annexure P.2) passed therein by the learned trial Magistrate.

The complainant-respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act') with the averments that accused-M/s Chadha Motors through its Partner Sumesh Chadha (present petitioner) took from him a loan of Rs.5,00,000/- vide cheque No.365512 dated 22.9.2011 (sic 22.11.2012) for a period of seven years; that the said cheque was duly encashed on 24.09.2011; that the accused in order to discharge their liability issued a cheque bearing No. 207372 dated 01.11.2018 for Rs.5,00,000/- drawn on ICICI Bank, Ludhiana; however, when the cheque was presented for encashment, the same got dishonoured with the remarks `insufficient funds' and that thereafter the accused were served with the legal notice, but to no avail.

In the said complaint, the learned trial Magistrate passed an order on 27.02.2019, thereby summoning accused No.1 and 2 (i.e. the petitioner and his partnership firm) to face the trial.

Learned counsel appearing for the petitioner contends that the complaint filed by the respondent-complainant is in respect of the alleged liability that had occurred in the year 2011. It is further submitted that the averments made in the complaint that the said loan had been taken by the petitioner for a period of seven years, are nothing, but to make out a case so as to bring the case within the period of limitation. While relying upon the judgment of this Court in Manjit Kaur Vs. Vanita, 2010(3) RCR (Criminal) 574, Madras High Court in K. Kumaravel Vs. R.P. Rathinam, 2011(3) RCR (Crl.) 574 and Bombay High Court in Ashwni Satish Bhat (Mrs.) Vs. Jeevan Divakar Lolienkar, 2000(1) RCR (Crl.) 829, it is contended that the limitation for recovery of the alleged date was three years from the date of issue thereof. It is further contended that at no point of time before the expiry of the said period of limitation, had there been any acknowledgement by or on behalf of the petitioner. Thus, the very complaint filed by the complainant was not maintainable.

After hearing the learned counsel for the petitioner and going through the case file, I find that the present petition merits acceptance.

Before proceedings further, it would be just and appropriate to reproduce para No. 3 of the complaint (Annexure P.1) as under:-

> "3. That accused No.1 through accused Nos. 2 to 4 took loan of Rs.5,00,000/- (Rupees Five Lacs) from the complainant through cheque No. 465512 dated 22.11.2012 on interest for the period of about seven years and the said cheque was duly encashed in the account of accused on 24.09.2011. The accused No. 1 promised to return the said loan and now in order to return the loan amount, the accused No.2 with the active consent of accused Nos. 1, 3 and 4 and for and on behalf of accused No.1, in order to return the loan amount of Rs.5,00,000/- and in order to discharge their existing enforceable legal liability towards the complainant has issued cheque bearing No. 207372 dated 01.11.2018 for Rs.5,00,000/- (Rupees five lacs) drawn on ICICI Bank, Ludhiana and fully assured that it will be duly encashed on its presentation with the bank and on this assurance only, the complainant has received and accepted the cheque."

There is no averment in the entire complaint as regards any kind of acknowledgment of the said debt by the petitioner within the period of three years i.e. the limitation period to recover the debt. Thus, there being no acknowledgement by or on behalf of the accused, it cannot be said that the complaint filed in respect of the said debt was maintainable.

Similar issue was considered by this Court in Manjit Kaur's case (supra). In the said case, a cheque issued in the year

2003 in respect of the loan advanced in 1999, was held not be legally enforceable. It was held as under:-

> "9. Adverting to the facts of the instant case, the cheque was issued on 28.6.2003. On reckoning, it works out that the loan was advanced somewhere in June, 1999. A meticulous perusal of the evidence on record would reveal that the appellant has not produced any document or other evidence revealing that the accused-respondent had acknowledged the debt within three years from the date of loan. Thus, by the time, the cheque was issued, the debt became barred by limitation because no acknowledgment was obtained before the expiry of three years from the date of loan. Section 18 of the Limitation Act, 1963 deals with the theory underlying the doctrine of acknowledgment. The true principle underlying an acknowledgment is that it merely renews the liability and gives the creditor or claimant a fresh period of limitation according to the nature of the liability which exists at the time of the acknowledgment. An acknowledgment cannot be regarded as evidentiary of the debt but an acknowledgment that a person owes money to another, a specified person is good evidence of his owing money to another. The dishonoured cheque Ex.P1 cannot be treated as acknowledgment under Section 18 of the Limitation Act, since the acknowledgment should be before the period of limitation is over and that it should be in writing. Thus, it cannot be said that the appellant has been able to prove that Ex. P1 was in relation to a legally enforceable debt or liability in law as the same was admittedly issued after more than three years of the advancement of the alleged amount as loan. So, if the matter is viewed in the background of the observations rendered in re: Ashwani Satish Bhat (Mrs.) (supra), it turns out that the accused-respondent had issued the cheque in 2003 when

> the debt had already become time barred. The acknowledgment of the alleged amount in 2003 was not valid acknowledgment under Section 18 of the Limitation Act and consequently, it was not a legally enforceable debt."

On the same analogy, it is held that the cheque issued in 2018 in respect of the loan advanced in the year 2011, cannot be said to be a valid acknowledgment and thus, the complaint filed in respect of the dishonour of the said cheque is not maintainable. As a consequence, the summoning order passed in the said complaint cannot be sustained.

In view of the above, the present petition is allowed. Both, the impugned complaint as also the summoning order, are hereby quashed.

(HARNARESH SINGH GILL)
JUDGE

15.01.2020
ds

Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No