

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9587-2021

Date of decision : 5.8.2021

Asha Rani

..... Petitioner (s)

Versus

State of Punjab and another

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vikram Anand, Advocate
for petitioner.

Mr. Sarabjit Singh Cheema, AAG Punjab.

(Through Video Conferencing)

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HARINDER SINGH SIDHU, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing complaint No. NACT/767 of 2018 dated 12.11.2018 titled as 'Piara Lal Versus Asha Rani' under Section 138 of Negotiable Instruments Act, 1881 and the order dated 11.2.2019 of the Ld. Judicial Magistrate 1st Class, Kapurthala whereby petitioner has been summoned in said case.

Respondent No. 2- Complainant has filed Criminal Complaint No. NACT/767-2018 dated 12.11.2018 under Section 138 of Negotiable Instruments Act, 1881 against petitioner with the allegation that in order to discharge her legally enforceable liability of Rs. 5,00,000/- the petitioner issued a cheque of Rs. 500000/- dated 14.09.2018 drawn on Indus Ind Bank, Kapurthala from her account maintained in that bank in favour of Respondent No. 2 . Petitioner assured respondent No. 2 that the cheque would be honoured. However, when cheque was presented, it was dishonoured for “Insufficient Funds”. Respondent No. 2 sent legal notice

dated 16.10.2018 to the petitioner calling upon him to make payment of the cheque amount within 15 days of the receipt of the legal notice. Petitioner did not send any reply to the legal notice nor did he pay the cheque amount to respondent No. 2. Respondent No. 2 filed the criminal complaint against petitioner in which petitioner has been summoned vide impugned order.

Learned counsel for petitioner has argued that neither in legal notice (Annexure P-4) sent by respondent No. 2 nor in the complaint (Annexure P-3) has the complainant given particulars of the legal liability for discharge of which cheque had been allegedly issued by petitioner. He thereby contends that complaint and summoning order are illegal.

It is not possible to accept the contention of the Ld. Counsel. It is well settled that there is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability is on the drawer of the cheque which has to be discharged at the trial. By virtue of Section 139 of Negotiable Instruments Act the Court has to draw a presumption that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved. (*M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234*) Accordingly there is no merit in this petition and the same is dismissed.

05.08.2021
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(HARINDER SINGH SIDHU)
JUDGE