

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-25997-2020 (O&M)

Date of decision:-15.2.2021

Simran Nair

...Petitioner

Versus

Ascharj Lal Gulati and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Kanwar Pahul Singh, Advocate with
Ms. Navneet Kaur Dhanjal, Advocate for the petitioner.

H.S. MADAAN, J.

By way of filing the present petition, petitioner/accused seeks quashing of the private complaint bearing No.1256 of 2019 registration No.COMA 404/2019 titled as “Ascharj Lal Gulati and others Vs. Simran Nair” under Section 138 of Negotiable Instruments Act, 1881 pending in the Court of learned Judicial Magistrate Ist Class, Ambala, the summoning order dated 13.3.2020 passed therein and also the ancillary proceedings.

The petitioner has the efficacious remedy of challenging the summoning order by way of filing revision petition before the Court of Sessions and if successful, the complaint would get redundant.

Even otherwise, the petitioner/accused can move application in the trial Court for discharge taking all the pleas available to her or raise the pleas at the time of consideration of service of notice of accusation

and the trial Court is expected to consider such pleas and to pass appropriate order in accordance with law.

While saying so, I find support from **Arvind Kejriwal Versus Amit Sibal and another in Crl.M.C. 5245/2013 and Cr.M.A. Nos.18920-21/2013** decided on 16.1.2014 by Delhi High Court, wherein dealing with a case with regard to summoning of accused in a complaint of defamation when the accused had challenged the summoning order by way of filing a petition under Section 482 Cr.P.C. before the High Court on various grounds seeking quashing of the criminal complaint, it was held that petitioner/accused should first urge the pleas raised in the petition before the trial Court at the stage of service/framing of notice under Section 251 Cr.P.C. in view of various judgments by the Apex Court i.e. , **Krishna Kumar Variar Vs. Share Shoppe (2010)12 SCC 485, Bhushan Kumar Vs. State (NCT of Delhi), (2012) 5SCC 424, Rajeev Taneja Vs. NCT of Delhi** in Crl.M.C. No.4733/2013 decided on 11.11.2013. I find further support from **Lilliput Kidswear Ltd. and others Vs. Nahar Industrial Enterprises in Crl.M.C.4722/2013** and judgment passed by this Court in CRM-M-31268-2014 titled **'Ramesh Kumar Thind Versus Lakhvir Singh'**, decided on 10.9.2014.

Learned counsel for the petitioner/accused has referred to various judgments first being **Vikas Jalan Versus M/s Shreya Pet Private Limited & Ors., 2011(7) RCR(Criminal)2318** wherein it was observed that when entire amount of compensation already deposited with the registry of the Court, submission of counsel for respondents that if amount is permitted to be withdrawn, they would not pursue the complaint, the amount was directed to be given to respondent within two

weeks and complaint proceedings were quashed.

This judgment does not help the petitioner much since it is yet to be proved that any settlement had arrived at between the parties in a Criminal Complaint No.25997 of 2020. Similarly second judgment i.e. **P. Krishnaveni Versus Tata Venkata Krishna Rao and another, 2013 (2) SCC(Cri) 198**, wherein it was observed that when in case of cheque dishonour, there was a admission by respondent/complainant that he had received entire amount due from appellant/accused, the complaint was quashed by Hon'ble Supreme Court in view of said judgment. This judgment also does not come to rescue of the petitioners/accused since no conclusively proved admission by respondent/complainant is there and complaint cannot possibly be quashed for such like reason.

Learned counsel for the petitioner has further argued that availability of full-fledged mechanism to deal with the grievances of the petitioners is no bar to petitioners approaching the Court craving for grant of similar relief by invoking the provisions of Section 482 Cr.P.C. In support of his contention, he has referred to judgments **Archna Dalmia Versus NCT of Delhi and another, 2013(136) DRJ 31, Dhariwal Tobacco Products Ltd. and others Versus State of Maharashtra and another, 2009(1) RCR(Criminal)677 and Keki Hormusji Gharda & Ors. Versus Mehervan Rustom Irani & Anr., 2009(3) RCR(Criminal)979.**

However, I find that keeping in view the facts and circumstances of the case the petitioner should first approach the trial Court since some of the objections sought to be taken are in the shape of mixed questions of facts and law, which may require leading evidence by the parties also, which can be done in the trial Court only. Section 482

Cr.P.C. saves the inherent powers of the High Court, which can be used to prevent abuse of process of any Court or otherwise to secure the ends of justice.

In the present case, the complainants had filed complaint under Section 138 of Negotiable Instruments Act, 1881 against the accused alleging that the cheque issued by the accused in favour of the complainant on account of discharge of financial liability had been dishonoured and since the accused did not make payment despite issuance of notice by the complainant, the complaint was filed. The trial Magistrate after recording the preliminary evidence vide speaking order had summoned the accused. It cannot be said that the whole process is abuse of process of the Court or that the complaint does not disclose any cause of action. The ends of justice further demand that when Court of competent jurisdiction after going through the complaint filed by a person and perusing the evidence adduced by him comes to the conclusion that there are sufficient reasons to summon the accused to face trial and accused is so summoned, then the accused should appear there and present his/her version instead of rushing to the High Court praying for quashing of the complaint, summoning order etc. in an attempt to shift the forum of trial from Court of Magistrate to the High Court. A complete mechanism being available under law for redressal of grievances of the petitioner/accused, the petitioner cannot possibly adopt a short-cut route to have prompt decisions by filing the petitions under Section 482 Cr.P.C. This provision is not panacea for all the ills, grouses and grievances of a litigant. If the law does not provide any recourse to a litigant for redressal of her grievances then she may knock at the door of this Court and her

grouse can be heard and dealt with in accordance with law but this Court cannot possibly take upon itself the task of resolution of every dispute when the proper forum is the Courts down in hierarchy, just because a litigant wants it to be done in a hope that a prompt result would be there.

Therefore, the petition stands disposed of accordingly relegating the petitioner to the remedy of filing revision petition raising all the pleas before the trial Court at appropriate stage and the trial Court would deal with such contentions, in accordance with law vide speaking order.

15.02.2021
Brij

(H.S. MADAAN)
JUDGE

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