IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.28261 of 2019
Date of Decision 26-10-2021.

Sumesh Chadha

………Petitioner

Versus

Shashi Jain

………Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

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

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C for seeking the quashing of COMA No.742/2019 dated 14.01.2019 (Annexure P-1) titled as "*Shashi Jain vs. M/s Chadha Motors & Others*" as well as the order dated 18.03.2019 (Annexure P-2), passed by the Judicial Magistrate Ist Class, Ludhiana, for summoning him in the above-said Complaint Case to face the trial under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act").

2. Shorn and short of unnecessary details, the facts, culminating in the filing of the present petition, are that the respondent-complainant (here-in-after referred to as "the complainant") preferred the Complaint Annexure P-1 against the petitioner as well as his co-accused under Section 138 of the NI Act with the allegations that they had raised a loan of

Rs.15,00,000/- from her, through the cheque dated 22.11.2012, for a period of about six years. To discharge their liability qua the repayment of the said loan amount, the petitioner issued a cheque dated 01.11.2018 in her (complainant's) favour and the same, when presented in the concerned Bank for its encashment, was returned dishonoured with the remarks "Account Closed". Then, the petitioner was served a legal notice dated 30.11.2018 but he (petitioner) and his co-accused failed to pay the above-said amount to her (complainant) and hence, she filed the said Complaint case against them and vide the order Annexure P-2 as passed therein, the petitioner and accused No.1-M/s Chadha Motors have been summoned to face trial for committing the above-said offence.

3. I have heard learned counsel for the petitioner in this petition at the preliminary stage and have also gone through the file thoroughly.

4. Learned counsel for the petitioner has contended that the petitioner and his co-accused had allegedly taken the loan to the tune of the above-said amount from the complainant on 22.11.2012 whereas the cheque in question was issued on 01.11.2018, i.e almost six years thereafter and thus, it is quite clear that the above-said loan/debt had become hopelessly time barred and was no more legally recoverable at the time of the issuance of the said cheque and it being so, no liability could be fastened upon the petitioner under Section 138 of the NI Act. To buttress his contentions, he has placed reliance upon the observations as made by the Single Benches of this Court in ***Sumesh Chadha vs. Yogesh Jain, CRM-M No.27736 of 2019 Decided on 15.01.2020; Manjit Kaur vs.***

Vanita, C.A. No.1477-SBA of 2006 Decided on 26.11.2009, and of Madras High Court in ***K.Kumaravel vs. R.P. Rathinam, 2011 (3) R.C.R.(Criminal) 574*** as well as of Bombay High Court in ***Zaheeda Kazi vs. Mrs. Sharina Ashraff Khan, 2007(4) R.C.R. (Criminal) 358*** and ***Ashwini Satish Bhat (Mrs.) vs. Jeevan Divakar Lolienkar 2000(1) R.C.R. (Criminal) 829.***

5. Though, the petitioner claims that the cheque in question was issued almost six years after taking the loan from the complainant and at that time, the said loan had become a time barred debt and was, therefore, not legally enforceable but however, it is worth-while to mention here that in Para No.3 of the Complaint Annexure P-1, the complainant has, categorically, mentioned that the afore-said loan had been taken for a period of about 06 years. This fact can and shall be looked into and adjudicated upon by the trial Court after appreciating and evaluating the evidence that may be led by the parties on the record during the course of the trial in the above-said Complaint Case and the same cannot be ascertained/determined at this stage while deciding the present petition.

6. The verdicts as rendered in ***Sumesh Chadha (supra); Manjit Kaur (supra); K.Kumaravel (supra); Zaheeda Kazi (supra)*** and ***Ashwini Satish Bhat (Mrs.)(supra)*** are of no avail to the petitioner in the present case in view of the observations as made by the Apex Court in ***S.Natarajan vs. Sama Dharman, Criminal Appeal No.1524 of 2014 (Arising out of Special Leave Petition (Crl.) No.603 of 2013) Decided On 15.07.2014,*** to the effect that:

> *"7. In our opinion, the High Court erred in quashing*

> *the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact."*

The present matter is squarely covered by the afore-cited observations made by the Apex Court and in the light of the same, it becomes quite explicit that the Complaint Annexure P-1 and the impugned order Annexure P-2 are not to be quashed on the said score/ground.

7. As a sequel to the foregoing discussion, it follows that the petition in hand, being *sans* any merit, deserves dismissal. Resultantly, the same is hereby dismissed accordingly.

26th October, 2021. **(MEENAKSHI I. MEHTA)**
JUDGE

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Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*