

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-36001-2021 (O&M)
Date of Decision:- 2.9.2021

Jang Bahadur Kaushal

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Yashpal Thakur, Advocate, for the petitioner.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

The petitioner has approached this Court seeking quashing of a complaint No. 3018, dated 26.11.2020 and also the summoning order dated 14.1.2020, passed by learned Judicial Magistrate 1st Class, Patiala, vide which the petitioner has been summoned to face trial for offence punishable under Section 138 of Negotiable Instruments Act, on the ground that a cheque allegedly issued by the petitioner for an amount of Rs.1.50 lakhs was dishonoured.

Learned counsel for the petitioner submits that the petitioner had taken land belonging to his *Bhabhi* (brother's wife) on lease for an amount of Rs.2.80 lakhs, out of which an amount of Rs.1 lakh and another amount of Rs.30,000/- had been received by her in advance and a balance of

Rs.1.50 lakhs was due. Learned counsel has referred to an affidavit dated 18.7.2020, stated to have been executed by petitioner's sister-in-law Pooja Kaushal wherein she has admitted the aforestated position.

Learned counsel has submitted that admittedly it was only an amount of Rs.1.50 lakhs which was due to be paid by the petitioner which the petitioner paid by way of online bank transactions. Learned counsel in this regard has referred to transaction dated 14.10.2020 (Annexure P-6) pertaining to an amount of Rs.1.30 lakhs which according to him was transferred to the account of daughter of petitioner's sister-in-law Pooja Kaushal. It has been submitted that even on an earlier occasion when an amount of Rs.30,000/- was paid to her sister-in-law on 10.7.2020 as has also been referred in the affidavit executed by Pooja Kaushal, the said amount of Rs.30,000/- had been paid into the account of daughter of Pooja Kaushal as is evident from the bank statement pertaining to the said transaction dated 10.7.2020 annexed as Annexure P-5. Learned counsel has submitted that in addition to the aforesaid payment of Rs.1.30 lakhs, another amount of Rs.20,000/- was paid by online banking vide transaction dated 14.10.2020 Annexure P-7. It has thus been submitted that since the entire balance amount of Rs.1.50 lakhs stands duly paid by way of bank transactions, there was no existing legal liability qua any payment and that in fact the complainant has misused the security cheque which had been furnished to her at the time of taking land on lease.

I have considered rival submissions addressed before this Court.

Since it is the case of the complainant that the cheque of Rs.1.50 lakhs stated to have been issued by the petitioner was towards the

balance of the lease amount whereas the petitioner relies upon two banking transactions dated 14.10.2020 i.e. Annexure P-6 and P-7 qua amounts of Rs.1.30 lakhs and Rs.20,000/-, it does *prima facie* appear that the petitioner has paid an amount of Rs.1.50 lakhs to the complainant's daughter in October, 2020. However, the authenticity of the said documents is yet to be verified. Further, the account statements do not bear the name of account holder and only account number is mentioned. It is by way of calling for the record of the bank that name of account holder and of beneficiary of transactions may be ascertained, which is only possible during trial. The complainant may even be able to demolish the said pleas during cross-examination. In these circumstances, this Court deems appropriate that the aforesaid pleas be raised before the trial Court at appropriate stage.

In view of the aforesaid observations, the petition is disposed of with liberty to the petitioner to raise all the pleas raised herein before the trial Court at appropriate stage. In case any such pleas are raised therein, the trial Court shall afford adequate opportunities to the petitioner to lead evidence to substantiate his pleas and shall consider the same in light of all the attending facts and circumstances, without being influenced by anything stated in this order.

The petition stands disposed of accordingly.

2.9.2021

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No