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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9268-2021 (O&M)
Date of decision:21.02.2022

AMANDEEP KAUR ...Petitioner

Versus

SARVESH KUMAR AND ANR ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rajiv Kataria, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for respondents.

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SURESHWAR THAKUR, J. (ORAL)

1. Against the petitioner, complaint bearing No.COMA-59-2016 of 23.03.2017 became instituted before the learned JMIC, Ludhiana. The complaint (supra), was cast under the provisions of Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act). The learned Magistrate concerned, after perusing the preliminary evidence, as became adduced qua the complaint (supra), proceeded to make a summoning order, upon, the petitioner herein.

2. The petitioner becomes aggrieved from the summoning order, issued upon her, and, has prayed for the quashing of the summoning order made on 04.01.2016 hence appended as Annexure P-2, with the instant petition. Moreover, the petitioner has also asked for the quashing of the complaint (supra).

3. During the pendency of the complaint (supra), admittedly a compromise occurred *inter-se* the complainant, and, the petitioner herein, and,

also with one Gurmeet Singh, the real brother of the petitioner herein. In the afore drawn compromise, the real brother of the petitioner herein, namely Gurmeet Singh, undertook to discharge the liabilities, as became encumbered, upon the petitioner herein, and, as arises from the issuance of the dishonoured negotiable instrument(s), to the complainant by the petitioner. Though, in pursuance to the afore made compromise, rather one Gurmeet Singh purportedly for discharging the therethrough(s) encumbered liability upon him, hence issued a negotiable instrument to the complainant. However, upon its presentation before the bank concerned, it became dishonoured. Consequently, the complainant was led to institute against him a complaint bearing No.COMA/321/2019, before the learned JMIC Ludhiana. Even in the complaint (supra), the learned Magistrate concerned, made summoning orders, upon Gurmeet Singh. However, Gurmeet Singh has neither challenged the summoning order nor has asked for the quashing of the complaint (supra), through his making a motion before this Court.

4. The learned counsel for the petitioner has, with the most profound legal wisdom, made a vehement submission before this Court, that the initially cast complaint against the petitioner is amenable for being quashed, and, set aside. The reason which he advances, for supporting the afore submission is rested, upon the factum, that since in pursuance to the compositely drawn compromise amongst all concerned, rather the negotiable instrument concerned, became issued to the complainant by one Gurmeet Singh, the real brother of the petitioner, and, that when upon presentation whereof before the bank concerned, it became dishonoured, and, thereupon resulted in a subsequent complaint, being instituted against him, before the learned Judicial Magistrate concerned. Yet, he submits, that the initial complaint bearing No.COMA-59-2016 of 23.03.2017, is

not amenable either for assumption of valid cognizance thereon nor can progress for adduction of evidence thereons, and, rather merges into the compromise drawn amongst all concerned, and, also into the subsequent complaint instituted against one Gurmeet Singh, who had in pursuance of compromise (supra), hence issued a dishonoured negotiable instrument, to the complainant.

5. He also submits, that the afore factual events, would bring to the force, the factum of the petitioner being unnecessarily harassed, and, humiliated, if she is to face trial qua a notice of accusation, for an offence under Section 138 of the Act. This Court, has considered the afore made submission. However, for the reasons to be assigned hereinafter, this Court is in painful disagreement, with the afore made submissions before this Court, by the learned counsel for the petitioner. The reason being that the learned counsel for the petitioner, has remained unmindful, to the import of the statutory language cast, in Section 138 of the Act. The relevant ingredients whereof are extracted hereinafter.

> *"**138 Dishonour of cheque for insufficiency, etc., of funds in the accoun**t. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—*

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

6. The stark legal provision, which enables the complainant, to draw proceedings under Section 138 of the Act against the issuer of a dishonoured negotiable instrument, is comprised in the factum of there being a legally enforceable debt or other legal liability, and, as generates from a valid commercial transaction entered into amongst the contracting parties concerned. The commercial transaction in respect whereof, the negotiable instrument became issued, and, became dishonoured, and, thereafter the respondent herein hence instituted the initial complaint against the petitioner herein, rather was *prima-facie* a sequel of a commercial transaction becoming entered into between the petitioner herein, and, the respondent concerned. Tritely the issuance of the dishonoured negotiable instrument was for discharge of the contractual liability, as became encumbered, upon the petitioner herein.

7. The factum of existence of a legally enforceable debt or other liability, in respect whereof the dishonoured cheque was issued, necessarily requires the existence amongst the concerned, of a valid mercantile contract, for thereafters, it being amenable for becoming legally enforced, through the drawing of proceedings under Section 138 of the Act, conspicuously after the

cheque concerned, became dishonoured. Obviously for construing the afore factum to become well rested, there has to be the imperative existence of a valid commercial relationship amongst the contracting parties concerned. In other words any person, outside the realm of the mercantile agreement or the contract concerned, upon, there occurring any breach of terms, and, conditions thereof, by the contracting party, or, upon arousal of any debt, from the apposite valid mercantile agreement, and, it becoming strived to in terms of a compositely drawn compromise,become liquidated through the issuance of a dishonoured negotiable instrument concerned, by the borrower concerned, rather can make a valid exculpatory plea that there was neither any any valid commercial relationship *inter-se* him, and, the issuer of the cheque concerned, or/and, with the presenter thereof, nor can the holder in due course, validly claim, that he has any legally enforceable debt or other liability hence for its valid liquidation qua him rather from/against the borrower of a *prima-facie* valid contractual debt. Consequently, the contracting parties qua the mercantile relationship were the petitioner herein, and, the complainant, and, one Gurmeet Singh rather was never a party to the initialy drawn commercial/mercantile transaction, in respect whereof, the negotiable instrument concerned, was initially issued, to the respondent, by the petitioner herein, and, upon its presentation became dishonoured, and, thereafter resulted in the institution of a complaint by the respondent-complainant against the petitioner herein, and, nor any liability for liquidation of a borrowed debt can become fastened upon Gurmeet Singh.

8. Consequently, the compromise, as became drawn amongst all concerned, can never become construed, within the ambit of the apposite statutory phrases (supra), as existing in Section 138 of the Act, rather to become a validly enforceable debt or other liability *inter-se* one Gurmeet Singh, and, the

respondent-complainant. The cause of action within the ambit of the statutory phrase, “the legally enforceable debt or other liability”, as occur in Section 138 of the Act, remains always invested in the respondent-complainant, and, can never be transferred merely through a compromise becoming drawn, during the pendency of complaint (supra), amongst all concerned, inclusive the complainant. Conspicuously, as stated above, there was no commercial or mercantile relationship *inter-se* the respondent-complainant, and, one Gurmeet Singh. The initially made complaint No.COMA-59-2016 of 23.03.2017, was amenable for assumption of cognizance thereons, by the learned Magistrate concerned, and, also the learned Magistrate concerned, did not err, in issuing summons, upon the petitioner herein, as in respect of the afore commercial transaction, the respondent-complainant, had a surviving, and, unabated cause of action against the petitioner herein. The solemn principle governing the foisting of the relevant cause of action, in the aggrieved concerned, is embodied in the root norm qua the privies to the appositely drawn contract, being never amenable to become relieved, of their respective contractual liabilities, rather through any transfer of the apposite debt. Only the aggrieved privy in the apposite contract, can enforce qua the non aggrieved defaulting privy, rather the relevant cause of action, especially appertaining to the drawing(s) of proceedings under Section 138 of the Act.

9. Moreover, if the afore made argument of the learned counsel, for the petitioner is accepted, then the import of the statutory provisions (supra), would become completely defeated, and, would permit intermeddlers or non privies to the contract, hence to become included in the mercantile transaction, which was rather entered into amongst the petitioner, and, the respondent, and, would also result in scuttling the legal effect of the liability comprised in the

initially issued dishonoured negotiable instrument concerned, being untenably construed, to be *prima-facie*, yet not a legally enforceable debt or other legal liability *inter-se* the concerned.

10. In coming to the above conclusion, this Court derives strength from the verdict of Hon'ble Supreme Court, reported in ***(2008) 5 SCC 638,*** made in case titled as '***Lalit Kumar Sharma and another V. State of Uttar Pradesh and another***'.

11. There is no merit in the petition, and, the same is hence dismissed.

12. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

21.02.2022
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Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No