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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13886-2022
Date of decision : 04.04.2022

Gurbax Singh

...Petitioner

Versus

Chander Bhan Goyal

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. A.K. Walia, Advocate for the petitioner.

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VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of complaint dated 18.04.2018 titled as Chander Bhan Goyal Versus Gurbax Singh (NACT-616-2018) (Annexure P-3) pending in the Court of Judicial Magistrate Ist Class, Kaithal as well as summoning order dated 18.04.2018 (Annexure P-4) passed by the said Court.

Learned counsel for the petitioner has submitted that in the present case, the ingredients of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881"), are not fulfilled and thus, the summoning order and complaint are bad. It is further submitted that in fact, on the date when the cheque in question, which was issued from the account of firm of the petitioner, drawn on State Bank of India, Village and Post Office Keorak, Tehsil and District Kaithal, was presented and dishonoured on 09.03.2018, the firm had, at any rate, balance available in the said account. For the said purpose, reference has been made to Annexure P-5 which is photocopy of the Statement of Account of State Bank of India maintained by the firm of the petitioner. It is also pointed out that the cash credit limit of the said account is Rs.20,00,000/- and prior to 09.03.2018, the amount which is stated to have been used by the petitioner was of Rs.15,43,644.90/- and thus, a balance amount of Rs.4,55,766/- was still available in the said account and thus, it cannot be said that the funds in the account of the firm of the petitioner were not sufficient on the said date. It is further argued that the statutory demand raised for payment of the cheque amount by respondent through legal notice dated 14.03.2018 was also not maintainable because it was based on return memo dated 09.03.2018 which is stated to be illegal, wrong and incorrect as funds were available in the account of the firm of the petitioner.

This Court has heard the learned counsel for the petitioner and has perused the paper book.

A perusal of the complaint would show that in order to discharge the liability of Rs.2,50,000/-, which amount the petitioner had taken from the complainant, the petitioner had issued cheque No.301849 dated 08.03.2018 from his account drawn upon State Bank of India, of an amount of Rs.2,50,000/-. It is further alleged in para 2 of the complaint that the said cheque was presented by the complainant with his banker i.e. Canara Bank, Branch Kaithal on 08.03.2018 for collection of the cheque amount but the same was returned uncashed vide memo dated 09.03.2018 due to the reason i.e. “Funds Insufficient”. It is also the case of the complainant that the complainant had tried to contact the petitioner but no response was given by the petitioner and accordingly, legal notice dated 14.03.2018 was sent to the petitioner through counsel but despite having the said knowledge, the petitioner did not make the said payment and accordingly, complaint under Section 138 of the Act of 1881 had been filed. On the basis of the averments made in the complaint and also the documents which had been duly exhibited, the summoning order dated 18.04.2018 (Annexure P-4) was passed. A perusal of the said order dated 18.04.2018 would show that specific reference had been made to Return Memo Ex.CB which showed that the dishonour of cheque had taken place on account of "Funds Insufficient". The said document has been annexed as Annexure P-2 with the present petition, a perusal of which would show that return memo had been returned with remarks "Funds Insufficient". Thus, a perusal of the complaint and the summoning order would show that prima facie a case under Section 138 of the Act of 1881 is made out against the petitioner and the said summoning order has been legally passed, after all the necessary ingredients under Section 138 of the Act of 1881 had been dealt with.

The complaint was filed on 18.04.2018 and the summoning order was also passed on 18.04.2018 and the petitioner has approached this Court almost after a period of more than 3 years, 10 months. No zimni orders have been placed on record so as to show as to what is the latest stage in the case. De hors of the same, this Court has considered the submissions made by learned counsel for the petitioner on merits.

The argument of the learned counsel for the petitioner to the effect that the account of the petitioner's firm had sufficient funds on the date in question is a defence plea which the petitioner seeks to take. This Court has put the question to the learned counsel for the petitioner as to whether the petitioner is ready to pay the cheque amount since, as per the petitioner, he had sufficient funds on the date of dishonour of the cheque in question. However, learned counsel for the petitioner has submitted that the petitioner is not ready to pay the said amount. Reliance sought to be placed upon Annexure P-5 is misconceived at this stage. The same is stated to be a photocopy of the statement of account, the authenticity and admissibility of which is to be proved during the course of trial. For the petitioner to rely upon the said statement, he would be required to examine the concerned witness who would have to produce the said record and opportunity would also have to be granted to the complainant to cross-examine the said witness so as to come to the conclusion as to whether the memo issued by the Bank Ex.C/B with the remark "funds insufficient" was wrongly issued and whether the petitioner had sufficient funds in his account. The fact that the petitioner is not ready to pay the cheque amount would also show that the abovesaid issue is a debatable issue and would depend upon the quality of evidence produced before the Court. It would have been a different case in case the petitioner had stated that the cheque was wrongly dishonoured in spite of his having funds and the petitioner was ready to honour the said cheque. Even perusal of the said statement of account, which is neither an exhibited document nor a document which is a part of the trial Court file, does not clearly bring out as to what was the balance amount available in the account on the date when the cheque was presented. In fact, in the said statement, the entry made on 09.03.2018 clearly shows the fact that the cheque had been dishonoured on the said date and an amount of Rs.590/- had been debited from the said account. The argument of the learned counsel for the petitioner to the effect that the petitioner had already consumed cash credit limit to the extent of Rs.15,43,644.90/- out of the total stated limit of Rs.20,00,000/-, is also not fully coming out from the said document. At any rate, the authenticity and admissibility of the said evidence is to be tested during trial. A perusal of the complaint as well as the return memo would prima facie show that the cheque had been returned on account of "Funds Insufficient". The said entry is also reflected in Annexure P-5. It would be on the petitioner to rebut the presumption under Section 139 of the Act of 1881, which leans in favour of the respondent. It is settled position of law that a petition under Section 482 of Cr.P.C. cannot be entertained, in a case, where the issue involved is with respect to disputed questions of fact.

The Hon'ble Supreme Court in "***S. Natarajan vs. Sama Dharman and Anr.***", reported as ***2015(2) RCR (Criminal) 854*** and a co-ordinate bench of this Court in judgment reported as ***2015(8) RCR (Criminal) 599*** titled as "***Som Nath vs. Mukesh Kumar***" have held that the question as to whether the debt, for the discharge of which the cheque in question is issued, is time barred or not can only be decided after the evidence is adduced since it is a mixed question of law and fact. The relevant portion of the judgment of the Hon'ble Supreme Court in S. Natarajan's case (supra) is reproduced hereinbelow:

> *"1. Leave granted. The appellant is the complainant in C.C. No.250 of 2011. It is his case that on 6/5/2006, the respondents/accused had received a sum of Rs. 49,000/- from him. On 4/7/2006, they have received a further sum of*

Rs. 1,00,000/-. On the same day, they received another sum of Rs. 1,00,000/-. It is further the case of the appellant that on 11/1/2007, the accused have received Rs.50,000/- and subsequently they have received Rs. 1,000/-. Thus, according to the complainant, a total sum of Rs. 3,00,000/- has been received by the accused. According to the appellant, to discharge the said debt, accused No.1 gave a cheque dated 1/2/2011. The appellant presented the said cheque for payment through his bank on 2/2/2011. The said cheque was dishonoured on the ground that the accused did not have sufficient funds in their account. A copy of the Memorandum dated 12/2/2011 issued by the Karur Vysya Bank Limited is on record at Annexure P-1."

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6…….. The High Court then observed that since at the time of issuance of cheque i.e., on 1/2/2011, the alleged debt of the accused had become time barred, the proceedings deserve to be quashed.

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."

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10. In our opinion, therefore, the High Curt could not have quashed the proceedings on the ground that at the time of issuance of cheque, the debt had become time-barred and therefore, the complaint was not maintainable. The High Court, therefore, fell into a grave error in quashing the *proceedings.*

11. In the result, the impugned order dated 25.7.2012 is set aside. The trial Court shall proceed with the case.

12. The appeal is allowed in the aforestated terms."

A perusal of the above-mentioned judgment would show that although the High Court had quashed the proceedings on the ground that the debt in question was time barred, but the Hon'ble Supreme Court had set aside the said order.

The relevant portion of the judgment of the coordinate Bench in Somnath's case (supra), is reproduced hereinbelow:

"6. Complainant in support of his case, led his preliminary evidence and the petitioner has been summoned to face the trial by the Trial court. It is not the case of the petitioner that the cheque in question was not signed/issued by him. The fact that the cheque in question was issued by the petitioner leads to a presumption that there exists a legally enforceable debt or liability. However, the said presumption is rebuttable and the same can be rebutted by the petitioner by leading evidence. At this stage, without there being any evidence on record, it cannot be held that the cheque drawn by the petitioner was in respect of a debt or liability which was not legally enforceable. The plea raised by the petitioner that the cheque in question was issued on account of a time barred debt can be gone into by the Trial Court after the parties lead their evidence with regard to their respective pleas. However, at this stage, it would not be just and expedient to quash the criminal proceedings at the very threshold by presuming that the cheque in question had been issued qua a time barred debt. Complainant is yet to lead his evidence in support of his case. In case the complainant fails to establish his case, petitioner will be acquitted by the Trial Court but it would not be in the

interest of justice to scuttle the criminal proceedings at the very threshold. 7. Hon'ble Apex Court in 'S. Natarajan versus Sama Dharman 2015(2) R.C.R. (Criminal) 854', has held as under:-

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.

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11. In the result, the impugned order dated 25/7/2012 is set aside. The trial court shall proceed with the case."

8. In view of the decision of the Apex Court in S.Natarajan's case (supra), the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

9. No ground for interference by this Court is made out."

A perusal of the above mentioned judgment would show that a defence plea, even that of time barred debt, can only be gone into by the trial Court after the parties have led their evidence with regard to their respective pleas.

This Court is of the opinion that in the present case, the defence plea sought to be taken by the petitioner can only be considered during the course of the trial as in the present case, a perusal of the complaint and return memo prima facie shows that the ingredients under Section 138 of the Act of 1881 are fulfilled.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

04.04.2022 **(VIKAS BAHL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**