IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

126 **CRM-M-14639-2022**

Date of Decision : **April 06, 2022**

Kavandeep Singh Sampuran

.....Petitioner

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. R.S.Rai, Sr. Advocate assisted by
Mr. Sarim Naved, Advocate and
Mr. Arjun Sheoran, Advocate for the petitioner.

JASGURPREET SINGH PURI. J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the order dated 4.7.2017 (Annexure P-1) as well as complaint case No.2536 of 2017 (Annexure P-3).

The learned Senior counsel submitted that the impugned order as well as the complaint filed under the Negotiable Instruments Act against the petitioner is liable to be quashed as the same amount to an abuse of the process of law in view of the grounds taken in the present petition. He submitted that vide Annexure P-4 purportedly the petitioner executed a memorandum of understanding (MOU) dated 16.4.2015 as first party and Amit Choudhary son of Sh. Ram Rattan Choudhary as second party. It was settled in the MOU that the second party had given a loan to the first party for a sum of Rs.2.60 Crores as the first party had agreed that he will necessarily make all the payments of loan alongwith interest totaling to Rs.3 Crores on or before 31.12.2015 and the first party had handed over a post dated cheque for a sum of Rs.3 Crores to the second party as a guarantee for the payment of amount mentioned above. The said MOU has been witnessed by two persons, namely, Amit Vaid (respondent No.2) and Basant Maoo. The learned Sr. counsel had also drawn the attention of the Court to a document at page No.40 of the paper-book which appears to be continuation of Annexure P-4 as per Index but stated to be not a part of Annexure P-4 by the counsel. He submitted that as per this document, which has been signed by the petitioner as well as by the respondent, the petitioner had handed over six cheques in favour of Amit Choudhary, Amit Vaid (respondent No.2) and Neelu Vaid by giving the entire description of the cheques and it has been further stated in the aforesaid document that the cheques have been handed over in discharge of their liability towards MOU dated 16.4.2015. He further referred to a photocopy of cheque of Rs.50 lacs Annexure P-6 which is shown to have been issued by the petitioner in favour of present respondent No.2, namely, Amit Vaid.

Learned Sr. counsel submitted that firstly, the MOU was purportedly executed between the petitioner and one Amit Choudhary whereas the present cheque is in the name of respondent No.2, who is Amit Vaid and, therefore, there is no legally enforceable debt qua present respondent No.2. He submitted that once there is no legally enforceable debt then in view of the explanation to Section 138 of the Negotiable Instruments Act, 1881, the present complaint and the summoning order are liable to be set-aside and quashed. He submitted that since the MOU was not signed with respondent No.2 in whose favour the cheque has been issued and there is no legally enforceable debt against the petitioner qua present respondent No.2, the further proceedings would amount to an abuse of the process of law and, therefore, the complaint is liable to be quashed. Secondly, the notice prior to the filing of the complaint was not served to the petitioner on his address and, therefore, the filing of the complaint was defective and the complaint cannot proceed further in the absence of the aforesaid defect. He referred to the address of the petitioner in the MOU Annexure P-4 which is stated as Block C-5, Building-56, Second Floor, Vasant Kunj, New Delhi whereas the legal notice as well as the complaint has been filed by giving a different address i.e. House No. 58, 2nd floor, Pocket C-5, Vasant Kunj, New Delhi. He has, therefore, submitted that the present complaint is liable to be quashed.

I have heard the learned Senior counsel for the petitioner.

The first argument raised by the learned Sr. counsel for the petitioner was that the MOU was signed with one Amit Choudhary and not with respondent No.2, who is the complainant in the present case and even if the cheque was issued in the name of respondent No.2-complainant, it cannot be said to be in lieu of discharge of legally enforceable debt. No doubt, that complaint under Section 138 of the Negotiable Instruments Act can be filed and processed when there is a legally enforceable debt. However, the question as to whether it is a legally enforceable debt or not is a matter of evidence which can be proved at the time of trial. The petitioner seeks to invoke extra ordinary jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the complaint at the threshold. The Negotiable Instruments Act is a special legislation and Section 138 of the Negotiable Instruments Act pertains to statutory presumption by providing that 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. Furthermore, Section 139 of the Negotiable Instruments Act specifically provides a statutory presumption that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability. So far as the reliance made by the learned Senior counsel to the explanation to Section 138 of the Negotiable Instruments Act is concerned, the onus to prove as to whether it was a legally enforceable debt or not lies upon the accused. The statutory presumption under Sections 138 and 139 of the Negotiable Instruments Act is always rebuttable presumption which can be rebutted on facts by way of evidence during the trial. The Hon'ble Supreme Court in **<u>Bir Singh Vs. Mukesh Kumar, 2019(4) SCC 197</u>** observed that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability.

In the facts and circumstances of the present case, a perusal of the MOU Annexure P-4 would show that the same was executed between the petitioner and one Amit Choudhary which also included legal heirs, executors, administrators, legal representatives, nominees and assignees and the document annexed alongwith aforesaid MOU at page No.40 of the paper book shows that six cheques were given by the petitioner to Amit Choudhary, Amit Vaid (respondent No.2) and Neelu Vaid and detailed description has also been provided. It has been further noted in the aforesaid document that these cheques have been handed over in due discharge of his liability towards MOU dated 16.4.2015 which was duly executed by him with Amit Choudhary. This document has also been signed by the petitioner as well as respondent No.2 as a witness. Therefore, from the recital of the same, it can be seen that the petitioner himself had handed over the cheques to the complainant-respondent No.2 in due discharge of his liability towards MOU. A comparison of Annexure P-6 which is the photocopy of the cheque which is subject matter of the present dispute would show that the cheque number, date, amount and the names are the same and, therefore, they correlate with each other. Furthermore, in the complaint filed by respondent No.2 it has been specifically stated in Para No.2(iv) that Amit Choudhary owned some money from complainant-respondent No.2 and, therefore, the accused person issued a cheque in favour of complainant to discharge his liability under the MOU dated 16.4.2015. In the present case the issuance of cheque, its authenticity or signatures etc. have not been disputed by the petitioner in the present petition and rather it has been specifically stated by the petitioner in para No.5 of the present petition that the merits are not being argued in the instant petition which is based upon the fact that there is no enforceable debt. Therefore, the petitioner has only confined himself on the issue that it was not a enforceable debt. Therefore, this Court is of the view that the statutory presumption in favour of respondent No.2-complainant although rebuttable can be rebutted only by adducing evidence at the time of trial and in view of the aforesaid factual position, it is not a case where on the face of it, it can be said that it is not an enforceable debt.

The second argument raised by the learned Senior counsel was that the legal notice was defective because it was not given on the address of the petitioner. Although the legal notice has not been attached alongwith the present petition but a photocopy of the same was produced during the course of hearing. Therefore, it is necessary to reproduce the addresses which have been given in the MOU, legal notice, complaint and memo of parties itself.

MOU: Kavandeep Singh Sampuran son of Shri Sampuran Singh, resident of Block C-5, Building-56, Second Floor, Vasant Kunj, New Delhi-110070.

Legal notice (as per photocopy supplied during the course of arguments) Mr. Kavandeep Singh Sampuran House No. 58, IInd Floor, Pocket C-5, Vasant Kunj, New Delhi-110070.

Complaint: Mr. Kavandeep Singh Sampuran, H.No. 58, IInd Floor, Pocket C-5, Vasant Kunj, New Delhi-110070.

Memo of Parties: Kavandeep Singh Sampuran Aged about 37 years, S/o Sh. Sampuran Singh, R/o House No. 58, 2^{nd} Floor, Pocket C-5, Vasant Kunj, New Delhi-110070. Presently at R/o Fariview House Southdown Road, Winchester Hants S0212 By, England (Passport No. 720144058, Mobile No. +447809207008).

A perusal of the paper-book would show that the MOU is of the year 2015, legal notice was issued in the year 2016, complaint was filed in the year 2017 and the present petition has been filed in the year 2022. The addresses given in the legal notice, complaint and the present petition are the same. Therefore, once the petitioner himself has given his address in the memo of parties in the present case which matches with the legal notice and the complaint, the plea raised by the learned Senior counsel appears to be misconceived. Therefore, the second argument raised by the learned Senior counsel also deserves to be rejected.

In view of the aforesaid position, this Court does not find any ground to invoke the extra ordinary jurisdiction of this Court under Section 482 of Cr.P.C. for quashing of the summoning order as well as the complaint.

Consequently, the present petition is, hereby, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

April 06, 2022
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No