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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34655-2022

Date of Decision: 05.08.2022

Anamika Mishra

....Petitioner(s)

Versus

Aadhar Housing Finance Limited and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Sharma (Kanav), 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 complaint bearing No.NACT/16723 dated 30.09.2019 and the summoning order dated 30.10.2019 passed in a case under Section 138 of the Negotiable Instruments Act, 1881.

It has been submitted by the learned counsel for the petitioner that in the present case the petitioner alongwith her husband had availed a housing loan of Rs. 8,48,025/- on 29.12.2015 from Aadhar Housing Finance Limited Branch Office at Ist Floor, LDA Centre-2, Sardar Patel Marg, Allahabad by mortgaging their property and some security cheques were also given to the aforesaid Housing Finance Limited Company. Thereafter, during the lock down period the business of the husband of the petitioner came down and some of the EMIs could not be paid on time.

Thereafter, proceedings under the Debts Recovery Tribunal were also

initiated against the petitioner. The petitioner had issued a cheque in favour of the respondent-company for a sum of Rs. 8,30,409/- but the same was given as a security cheque but when the loan amount was not paid to the respondent, then the same was presented before the bank which was dishonoured. He further submitted that the cheque was only for the purpose of a security cheque, although the petitioner was signatory of the cheque but no offence under Section 138 of the Negotiable Instruments Act, 1881 is made out. He further submitted that the said cheque was not issued in discharge of any legally enforceable debt and therefore, the complaint against the petitioner and also the summoning order Annexure P-6 was bad in law and the same are liable to be quashed.

I have heard the learned counsel for the petitioner.

As per the arguments advanced by learned counsel for the petitioner as well as a perusal of the complainant, it would show that the petitioner had undoubtedly issued a cheque for a sum of Rs. 8,30, 409/- in favour of the respondent-company who is the complaint in the proceedings under Section 138 of the Negotiable Instruments Act, 1881. The said cheque has also been attached at page No.53 of the paper- book which shows that it has been signed by the petitioner. Apart from the same, the petitioner has not disputed that she has not issued the cheque but it is a case of the petitioner that she had issued the cheque as a security. The argument raised by learned counsel for the petitioner that it was not for the purpose of any legally enforceable debt is not sustainable. Once a cheque is admittedly issued by the petitioner which according to the petitioner was a security cheque, then a statutory presumption arises in favour of the respondent under the provisions of the Negotiable Instruments Act, 1881. Although

this presumption is rebuttable but the said rebuttal can be made only at the time of trial by adducing evidence. However, the complaint and the summoning order cannot be quashed at the threshold since disputed questions of fact are involved and the question as to whether it was a legally enforceable debt or not can be seen only at the time of trial after adducing evidence. Another argument was also raised by the learned counsel for the petitioner that the petitioner belongs to Allahabad and the provisions of Section 202 of the Code of Criminal Procedure were not complied with. However, as per the judgment of the Hon'ble Supreme Court in ***Re: Expeditious trial of cases under Section 138 of N.I Act, 1881***, it has been held that Section 202 (2) of the Code is inapplicable to complaints under Section 138 of N.I. Act in respect of examination of witnesses on oath and the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses.

A perusal of the order Annexure P-6 which is a summoning order would show that the complainant has tendered into evidence his affidavit as Ex. CW1 alongwith other documents Ex. C1 to Ex. C5 and closed the preliminary evidence. Therefore, it cannot be said that there is a violation of Section 202 of the Code of Criminal Procedure in this regard.

In view of the aforesaid facts and circumstances, this Court is of the view that no ground is made out for quashing of the complaint and the summoning order and the present petition being devoid of any merit is hereby dismissed.

05.08.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking

: Yes/No

Whether reportable

: Yes/No