

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

227

CRM-M no.41680 of 2021
Date of Decision:10.02.2022

Smita Ratan Chinoy and another

..... Petitioner

Versus

State of Punjab and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Kajal Bansal, Advocate, for
Mr. Aasutosh Srivastava, Advocate,
for the petitioners.

Mr. M.S. Nagra, AAG, Punjab

Mr. S. S. Sidhu, Advocate,
for respondent no.2.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

Vide this petition, the petitioners seek the quashing of a criminal complaint instituted under the provisions of Section 138 of the Negotiable Instruments Act, 1881, as also Section 420 of the IPC. They further seek quashing of the summoning order dated 26.03.2019 passed by the learned JMIC, Abohar, whereby they have been summoned “wrongly and illegally under Section 138 of the NI Act, 1881”(as alleged).

On 05.10.2021 the following order had been passed by this court,

issuing notice of motion:-

“Case heard via video conferencing.

Notice of motion be issued to the respondents, returnable on 18.11.2021.

It is made clear that there is absolutely no interim order operating in favour of the petitioners, in view of the fact that what has been pointed to presently at least by learned counsel for the petitioners in the form of a legal notice stated to have been issued on behalf of the petitioners to respondent no. 2 herein, dated 07.10.2015 (copy Annexure P-4), demands the return of post-dated cheques drawn on the HDFC Bank, with the subject matter of the complaint in question seen to be a cheque drawn on the Oriental Bank of Commerce, as per paragraph 3 of the complaint (copy Annexure P1).

To be shown in the urgent motion list as counsel for the petitioners seeks a stay on proceedings, which has not been granted today in view of what has been observed hereinabove.”

Thereafter on 18.11.2021, after reproducing the earlier order, the following order was passed:-

“Today, as per the report of the Registry, the contesting respondent, i.e. respondent No.2, has been served through her husband. However, none appears on her behalf despite service.

Learned counsel for the petitioners seeks to place on record about 30 documents as annexures with the accompanying petition, with no application having been filed for that purpose, by which notice could be issued to the respondents, who already stand served of the notice issued in the petition. Consequently, the documents are not taken on record today, with counsel for the petitioners obviously at liberty to file an appropriate application to do so, if she wishes.

Adjourned to 11.01.2022.

However, in view of the fact that despite it having been

specifically stated in the order dated 05.10.2021 that the matter be shown in the urgent list, as the petitioners were seeking stay of proceedings before the trial Court, and respondent No.2 having still chosen not to appear either personally or through counsel, on the strength of what has already been noticed in that order of this Court, the trial Court is directed to adjourn the matter to a date beyond the date fixed by this Court, till the next date of hearing here.”

Thereafter, the petitioners had placed on record certain documents as Annexures P-8 to P-32 with the petition, as recorded in the order dated 11.01.2022.

Counsel for respondent no.2 had submitted that he was not opposing placing of the document on record but as regards their significance, he would address arguments, if needed.

Today, learned counsel for the petitioners points to that part of a statement in respect of a particular account held by one M/s Eighteen Degrees North, with the HDFC Bank, Pune, from which she specifically points to entries no.86 to 104 (at page 83 of the paper-book), to submit that all dues as were to be paid by the petitioners to respondent no.2 in terms of the Leave and License Agreements dated 20.05.2014 (Annexures P-11 and P-12), were duly paid and in fact the cheque as was presented and has been dishonoured, (shown to be dated 10.11.2018, drawn on the Oriental Bank of Commerce), was only one which was given by way of security as a post-dated cheque and consequently not even a *prima facie* case is made out against the petitioners and therefore the complaint in question deserves to be quashed.

Having considered the matter, what learned counsel is wishing this

court to do in a petition filed under Section 482 of the Cr.P.C., is to virtually take evidence on the merits of the complaint, as to whether the cheque in question was only issued by way of a security and there was no legal liability otherwise of the petitioners; whereas that is something which needs to be proved before the trial court by the petitioners in the opinion of this court, and is not reason enough for this court to invoke jurisdiction under Section 482 of the Cr.P.C. to quash the complaint in question.

Consequently, finding no merit in this petition, it is dismissed, but with it made absolutely clear that this court has made no comment whatsoever on the actual merits thereof and the trial court would proceed with the matter wholly on the basis of evidence led before it on both sides. The interim order obviously stand vacated.

As regards the petitioners being allowed to appear before the trial court by way of video conference rather than personally, as is prayed for by learned counsel, an appropriate application would be made by them before that court, which would be dealt with wholly on its own merits by that court.

Mr. Sidhu, learned counsel for respondent no.2, submits that as a matter of fact the petitioners have not appeared before the trial court till date.

No comment is made thereon by this court, with that court to proceed as per law in the matter.

February 10, 2022
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes