

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

CRM-M-44817-2021 (O&M)
Date of decision: 05.01.2022

Harvinder Kaur

...Petitioner

Versus

Kotak Mahindra Bank Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Bhupinder Ghai, Advocate for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Through the present petition, the petitioner seeks quashing of complaint under Section 138 read with Sections 141 and 142 of the N.I. Act, filed by the complainant-respondent and pending before the Judicial Magistrate 1st Class, Chandigarh; summoning order dated 09.12.2020 and all consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that the complaint in question was filed on 05.02.2020, whereas the resolution to file the present complaint was passed on 10.01.2019, but the said resolution does not contain any averment as regards the authorised person having witnessed the transaction or possessing due knowledge about the transaction. It is further submitted that legal notice was issued on 06.01.2020, whereas the complaint was filed on 05.02.2020; that the cheques in question were given by the

petitioner to the respondent as security for taking a loan of Rs.22,50,000/-; that it is settled law that no complaint under Section 138 of the Act, is maintainable, qua security cheques and that the petitioner has already repaid a total sum of Rs.24,49,530/-, but the respondent-complainant has wrongly shown the balance amount as Rs. 3,86,458/-. It is further submitted that the petitioner has already obtained an order from the Civil Court at Paunta Sahib, restraining the respondent-complainant from taking forcible possession of the vehicle in question; that it is settled law that when taking of the forcible possession of the loaned vehicle has been stayed, the Bank/financial institution, may initiate appropriate proceedings, but in no case, can it initiate the proceedings under Section 138 of the Act.

In support of his case, learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court passed in A.C. Narayanan Vs. State of Maharashtra and another, 2013(4) RCR (Criminal) 306 and the judgment of this Court in Veena Kakkar Vs. State of Punjab and another, 2021(3) RCR (Criminal) 136.

The pleas raised in the present petition, cannot be a ground to quash the impugned complaint and consequential proceedings. Whether or not the petitioner has repaid the entire amount, is a question, which can only be decided on the basis of evidence led before the trial Court. Still further, the authorised person having due knowledge of the factum of the transaction or having witnessed the transaction, is also a matter of evidence.

The Hon'ble Supreme Court in Kaptan Singh Vs. The State of Uttar Pradesh and others, 2021(3) RCR (Criminal) 840, while relying upon its earlier decision in Dhruvaram Murlidhar Sonar Vs. State of Maharashtra,

(2019) 18 SCC 191, has held that when there are serious triable allegations in complaint, it is improper to quash FIR in exercise of inherent powers of the High Court under Section 482 Cr.P.C., It was held as under:-

“9.2. In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C., 1973 to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C., 1973, though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C., 1973. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C., 1973.”

As the present case involves the triable allegations, no ground is made out to quash the impugned complaint and the consequential proceedings arising therefrom.

In view of the above, the present petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

05.01.2022

Mangal Singh

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No