

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 125

Case No. : CRM-M-2258-2023

Date of Decision : January 16, 2023

Yashpal Verma

.... Petitioner

vs.

Sunil Dutt

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Gautam Kaile, Advocate
for the petitioner.

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GURBIR SINGH, J. :

This is a petition under Section 482 Cr.P.C. for quashing the summoning order dated 09.03.2021 (Annexure P-7) and the complaint bearing No.NACT/59/2020 (Annexure P-5) filed under Section 138 of the Negotiable Instruments Act, 1991, with regard to Cheque bearing No.713176 dated 25.11.2019, amounting to Rs.2,00,000/- (Rupees Two Lacs), along with all consequential proceedings arising therefrom.

Learned counsel for the petitioner states that the petitioner and respondent were having friendly terms. In the month of June, 2017, the petitioner approached the respondent with a request to grant him friendly loan of Rs.70,000/-, which was considered by him and a sum of Rs.69,000/- was advanced to the petitioner by the respondent as friendly loan. In discharge of the said liability, the petitioner issued a cheque dated

05.05.2018 for Rs.69,000/- but the same was dishonoured with remarks ***“Funds Insufficient”*** on 01.06.2018. The respondent contacted the petitioner, who requested him to represent the said cheque again and gave assurance that the same would be honoured, but again, vide memo dated 26.06.2018, the said cheque was dishonoured with remarks ***“Funds Insufficient”***. The respondent sent a notice to the petitioner. Upon this, the petitioner requested the respondent to grant him sometime for re-payment of cheque amount. On 06.09.2018, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (Annexure P-1). After that, on 16.12.2018, the matter was compromised (Annexure P-2). A sum of Rs.20,000/- was paid to the respondent and regarding remaining amount, it was settled that the same would be paid in monthly instalments of Rs.5,000/- each. The total amount was duly paid back to the respondent by the month of October 2019. The respondent withdrew his complaint by making a statement. The said complaint was dismissed as withdrawn vide order dated 20.02.2019 (Annexure P-3). It is pertinent to mention here that when the above-said compromise was effected between the parties, a cheque amounting Rs.2,00,000/- (Annexure P-4) was given to the respondent as security cheque and it was agreed that he would refund the cheque after getting his due amount of Rs.49,000/-. However, after getting his amount of Rs.49,000/- in the month of October, 2019, the respondent did not return the said cheque but presented the same to the Bank for payment and when it was dishonoured, he filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (Annexure P-5) against the petitioner. The petitioner

was summoned in the said complaint vide order dated 09.03.2021 (Annexure P-7). Before filing the afore-said complaint, the respondent also moved a complaint dated 27.12.2019 before Deputy Superintendent of Police, Ganaur with a different story that he had started a committee with the petitioner amounting to Rs.3,00,000/- (Annexure P-6). The entire payment of Rs.69,000/- had already been made to the respondent and the cheque in question was only a security cheque. Therefore, the complaint is not maintainable. Hence, the complaint and summoning order dated 09.03.2021 are liable to be quashed.

I have heard learned counsel for the parties and perused the case file.

A bare perusal of file shows that the respondent earlier filed a complaint with regard to dishonour of cheque issued by the petitioner (Annexure P-1). Then the petitioner entered into compromise on 16.12.2018 (Annexure P-2) which is as under :-

“I, Sunil Verma son of Sh. Krishan Dutt Verma on 16.12.2018 money transaction with Yashpal Son of Sh. Ram Gopal Verma that Yashpal had to give Rs.69,000/- of Sunil Verma son of Krishan Dutt Verma. That has been settled. That Rs.20,000 in cash and remaining will be given in installment every month, will give Rs.5,000/- on 23rd day of every month. The witnesses of this compromise they are sister Sudesh and brother-in-law Sonu of Sunil son of Krishan Dutt Verma residents of Sivah, Panipat. After this compromise the case which has been

filed by Sunil son of Krishan Dutt Verma against Yashpal Verma which is with regard to Rs.69,000/- will withdraw that case which has been filed at Gannaur Court.

Witness

*Sd/-
Sonu 16.12.018
Sudesh*

*Sd/-
Sunil Verma
Yashpal”*

This compromise is silent with regard to the fact that any cheque by way of security was handed over to the respondent for repayment of the remaining amount of Rs.49,000/-. On 20.02.2019, the respondent withdrew his complaint stating that he did not want to proceed with the complaint and the said complaint was dismissed as withdrawn (Annexure P-3). The summoning order is dated 09.03.2021 (Annexure P-7). The cheque was dishonoured with remarks **“Payment stopped by Drawer”**. The petitioner has not denied his signatures on the cheque. There is no illegality in the summoning order passed by the learned Trial Court. The complaint itself is maintainable. The petitioner can raise all the pleas before the learned Trial Court. Mere statement of the petitioner that the cheque in question was issued as a security cheque, without any supporting evidence, cannot be accepted, at this stage. The petitioner can very well prove the same while leading his defence evidence. If any complaint was moved to the police by the respondent giving different version, it can only be proved during trial.

The learned Trial Court has not committed any illegality in summoning the petitioner under Section 138 of the Act.

The present petition is without any merit and is accordingly dismissed in limine.

January 16, 2023
monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>