

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(259)

CRM-M-3254-2020
Date of Decision: 11.04.2023

Rakesh Kalta ...Petitioner

Versus

State of Haryana and another ...Respondents

CRM-M-3256-2020

Rakesh Kalta ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. D. D. Singla, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARKESH MANUJA, J.(ORAL)

This order shall disposed of aforementioned two criminal miscellaneous petitions as common questions of law and facts are involved in both. For convenience facts are taken from CRM-M-3254-2020 and the parties will be referred by their status in the present case.

By way of present petition filed under Section 482 Cr.P.C. prayer has been made for quashing of order dated 06.01.2020 passed by the Court of Sub-Divisinal Judicial Magistrate, Kalka, vide which an application for recalling the order dated 08.05.2019 seeking reopening of the **Complaint Case No. CIS No.N.I.Act/79/15, DOI: 05.05.2015, CNR No.HRPKI-001328-2015** and to issue summons to the respondent/accused stands declined.

and in pursuance thereof, Mr.Brijender Kaushik, Advocate, appeared on behalf of respondent No.2 on 04.03.2020, however, on the next date of hearing i.e. 08.07.2022, he withdrew his memo of appearance. Faced with this, fresh notice was issued to respondent No.2. In pursuance thereof, *dasti* summons were taken by the petitioner for effecting service upon respondent No.2 and the office report shows that *dasti* notice was received back with the report that notice was affixed on the house of respondent No.2-complainant in compliance of Section 65 Cr.P.C. Accordingly, to my satisfaction, service is complete, however, none has appeared on behalf of respondent No.2.

Assailing the order dated 06.01.2020 passed by the Court of Sub-Divisional Judicial Magistrate, Kalka, learned counsel for the petitioner submits that in the present case complaint under Section 138 of Negotiable Instruments Act was filed by the petitioner wherein respondent No.2 was summoned. Post appearance of respondent No.2, the parties arrived at a compromise which was reduced into writing on 08.05.2019, signed by both the parties besides their witnesses. As per compromise, the following schedule was carved out for the discharge of liability by respondent No.2.

“That due to the interference of the respectable of the society a compromise has been arrived between the parties and as per compromise the first party gave a fresh cheques the second party and the details of the cheques are as under:

- (a) Cheque No.000242 dated 05.11.2019 of Rs.25,00,000/- of HDFC Bank Ltd.*
- (b) Cheque No.000244 dated 05.12.2019 of Rs.25,00,000/- of HDFC Bank Ltd.*
- (c) Cheque No.000246 dated 01.03.2020 of Rs.25,00,000/- of HDFC Bank Ltd.*
- (d) Cheque No.000247 dated 01.05.2020 of Rs.25,00,000/- of HDFC Bank Ltd.*
- (e) Cheque No.000248 dated 01.07.2020 of Rs.25,00,000/- of HDFC Bank Ltd.*
- (f) Cheque No.000249 dated 01.11.2020 of Rs.25,00,000/- of HDFC Bank Ltd.*
- (g) Cheque No.000245 dated 01.02.2020 of Rs.25,00,000/- of HDFC Bank Ltd.*

(h) Cheque No.000250 dated 02.02.2021 of Rs.25,00,000/- of HDFC Bank Ltd.”

In view of the aforementioned settlement, even the statements of petitioner as well as respondent No.2 were got recorded by the trial Court on 08.05.2019 giving specific reference to the compromise deed and resultantly vide order dated 08.05.2019, the complaint under Section 138 of the Negotiable Instruments Act, 1881, was ordered to be dismissed as withdrawn.

It is the case of the petitioner that respondent No.2 failed to comply with the terms of the settlement dated 08.05.2019 and thus, an application was moved at his instance seeking recalling of the order dated 08.05.2019 as well as for restoration of the complaint. The aforesaid application dated 11.12.2019 filed at the instance of petitioner was dismissed by the trial Court vide order dated 06.01.2020 with the observation that trial Court did not possess the jurisdiction to re-open the complaint by recalling the order dated 08.05.2019. It is the said order dated 06.01.2020 which has been impugned by way of present petition.

Learned counsel for the petitioner submits that respondent No.2 having entered into the settlement caused withdrawal of the complaint filed at the instance of petitioner with the assurance regarding discharge of the entire liability, however, failed to comply with the same and thus, the restoration of the complaint was imperative being in the interest of justice as the respondent No.2 cannot evade the process of law by playing tricks against the petitioner as well as the Court itself. He further points out that even at the time of making submissions before the court on 08.05.2019, in pursuance to the settlement arrived at between the parties, the petitioner reserved his right for reopening of the complaint in case of any default from the side of respondent No.2. Learned counsel also places reliance upon a decision made by this

Kohli, 2006 (3) R.C.R. (Criminal) 691, wherein, under similar circumstances, the complainant was granted liberty by this Court for revival of the complaint in case the drawer of the cheque failed to discharge his obligation in pursuance to the settlement arrived at between the parties.

As already mentioned, no one has chosen to appear on behalf of respondent No.2 despite service.

I have heard learned counsel for the petitioner and have gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

Once the complainant filed at the instance of petitioner was dismissed merely on account of a settlement having arrived at between the parties as regards discharge of liability by respondent No.2 in a scheduled manner followed by recording of settlement of parties before the trial Court supporting the said compromise even reserving right to reopen the criminal complaint, passing of impugned order has caused serious prejudice to the rights of the petitioner. In fact, the respondent No.2 having taken benefit of entering into the settlement with the petitioner which was in fact the sole basis of withdrawal of complaint cannot be permitted to draw benefit having failed to comply with the terms thereof.

In view of the discussion made hereinabove as well in view of the observation made by this Court in case of **M/s Sigma Diagnostics Ltd. (Supra)**, the impugned order dated 08.05.2019 (Annexure P-5) passed by the Sub Divisional Magistrate, Kalka, resulting into dismissal of the complaint filed at the instance of petitioner having been withdrawn in pursuance to the compromise dated 08.05.2019 is hereby quashed and the complainant i.e.

No.HRPKI-001328-2015 filed at the instance of petitioner shall be restored to its original number. The trial Court shall proceed further in accordance with law by issuing fresh notice to respondent No.2 about the proceedings pending against him from the stage it were withdrawn.

A photocopy of this order be placed on the file of connected cases.

Pending application(s) if any also stand disposed of.

(HARKESH MANUJA)
JUDGE

11.04.2023
anil

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No