

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2023:PHHC:052654

(205)

CRM-M-11106-2017

Judgement reserved on: 27.03.2023

Date of Decision: 17.04.2023

Jatinder Pal @ Bhangi

--Petitioner

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. H.K. Brinda, Advocate for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. G.N. Malik, Advocate for respondent no.2.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C praying for quashing of complaint bearing no. 68/2014 dated 25.7.2014 filed under section 138 of Negotiable Instruments Act pending in the court of learned SDJM, Anandpur Sahib, summoning order dated 25.7.2014 (Annexure P-2) and order dated 30.8.2016 (Annexure P-6).

Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He submits that petitioner had been prosecuted by respondent no.2 by way of filing a complaint under Section 138 of Negotiable Instruments Act on the basis of allegations that the complainant-respondent no.2 was having friendly relations with him and thus the petitioner had borrowed a sum of Rs.1,50,000/- from him for some domestic purpose. It has been further alleged that the petitioner issued a cheque bearing no.000323 dated 19.2.2014 of Rs.1,50,000/- drawn on ICICI Bank in favour of the complainant respondent no.2, however, on presentation of the same the cheque was dishonoured with the remarks

“Insufficient Funds” vide memo dated 20.2.2014. Thereafter, respondent no.2 presented the cheque twice for encashment but the same was dishonoured on the same ground vide memo date 27.3.2014 and 12.6.2014. Though, respondent no.2 issued notice to the petitioner for paying the amount, however, as the petitioner did not make the payment, hence, the complaint in question was filed. Counsel submits that the learned Trial Court had illegally summoned the petitioner by way of impugned summoning order dated 25.7.2014 and thereafter he filed a petition for dismissal of the complaint which was also wrongly declined vide order dated 30.8.2016. It is submitted that the impugned order being against the evidence on record deserves to be set aside. He submits that the learned SDJM, Anandpur Sahib after receiving the complaint recorded the preliminary evidence and vide order dated 25.7.2014 summoned the petitioner for 3.9.2014. The petitioner after appearing before the court filed an application for dismissal of the complaint along with the circular issued by the Reserve Bank of India. Respondent no.2 filed a reply to the same. He submits that the application filed by the petitioner was wrongly dismissed by the Trial Court. It is submitted that as per the Reserve Bank of India guidelines dated 4.11.2011 which were applicable w.e.f. 1.4.2012 the validity of the cheque was only for 3 months from the date of issuance of the same and thus after expiry of 3 months from the date of issuance, the cheque would automatically be taken as expired but the complainant respondent no.2 had presented the same after expiry of the prescribed period and thus the complaint filed was not maintainable. It is submitted that the learned Trial Court has failed to appreciate the same that the complaint filed is not maintainable and thus illegally summoned the petitioner. Counsel has

relied upon the judicial precedent of Hon'ble Madras High Court in case of ***V.Girija & another Vs. M/s Sri Vaisnavi Traders (CRL.O.P. No.15882 of 2014 decided on 27.2.2019)***. It is further submitted that the learned Trial Court had also illegally declined the application filed by the petitioner for the dismissal of the complaint by passing the impugned order dated 30.8.2016 which is also unsustainable in the eyes of law and thus deserves to be set aside.

Learned counsel for complainant-respondent no.2 has vehemently opposed the submissions made by counsel for petitioner. He submits that there is no infirmity in the impugned order passed by the learned Trial Court. He submits that the petition filed before this court is not even maintainable as the petitioner is not availing the statutory remedy available to him. He further submits that admittedly the cheque was issued by the petitioner as the discharge of his liability towards the loan taken by him from respondent no.2. He submits that the petitioner had duly issued a signed cheque and thus he cannot escape the responsibility and liability as enumerated under the provisions of Negotiable Instruments Act. He submits that the guidelines of Reserve Bank of India relied upon by counsel for the petitioner have been misinterpreted by counsel for the petitioner and thus there is no merit in the present petition.

I have heard learned counsel for the parties at length and have gone through the record carefully.

Evidently respondent no.2 has filed a complaint under section 138 of Negotiable Instruments Act on the allegations that the petitioner had taken a loan of Rs.1,50,000/- from him and as a discharge of his liability issued a cheque in his favour, however, on presentation before the Bank

concerned the same was dishonoured with the remarks “Insufficient Funds”. As observed by learned Trial Court it was not mentioned on the cheque that the same is valid for 3 months. The contentions raised by learned counsel for the petitioner have been controverted by counsel for respondent no.2. The controversy involved is totally a disputed question of facts and the same is to be appreciated by the learned Trial Court on the basis of evidence led by both the sides regarding the contentions raised that whether the cheque is valid for 3 months or not.

The Hon'ble Supreme Court in *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 SCC Online SC 315* has held that quashing of FIR is an exception rather than an ordinary rule and the High Court should exercise the powers under Section 482 Cr.P.C sparingly with circumspection and the criminal proceedings ought not to be scuttled at the initial stage.

In view of the above discussion, there is no merit in the present petition and the same is hereby dismissed. However, nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

17.04.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No