

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114

CRM-M-9637-2023

Date of decision: 13.10.2023

Rajni Kasana

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vishal Singh, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of Criminal Complaint bearing No.NACT 2452 of 2018 dated 30.03.2018 under Sections 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') pending in the Court of learned Judicial Magistrate First Class, Faridabad.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case. As per the complaint in question, cheques had been issued in pursuant to Memorandum of Understanding (for short, 'MOU') dated 21.11.2017 (Annexure P-2) between respondent No.2 and estranged husband of the petitioner. It has been further submitted that the petitioner was neither a party to the MOU nor had any role to play in the transaction in question. Still further, though there was a civil dispute between the estranged husband of the petitioner and respondent No.2, however, the petitioner was not even a party to the civil suit nor had she handed over the cheques in question to respondent No.2, before the Court of learned ADJ Saket, New Delhi, as had been wrongly alleged in the complaint.

In fact, the signatures of the petitioner had been forged. It has been further asserted that even otherwise as per Clause 3 of the MOU dated 21.11.2017 (Annexure P-2), the payment of ₹6 lakhs was to be made after the possession of the rear portion of the flat had been handed over to the husband of the petitioner. However, neither the aforesaid rear portion of the flat had been vacated nor its possession handed over. It has been vehemently argued by the counsel for the petitioner that therefore, owing to non-adherence to the MOU, by the complainant, there existed no legal liability on the date of issuance of the cheques in question and the complaint in question was, therefore, liable to be quashed.

3. I have heard learned counsel and perused the relevant material on record.

4. Before proceeding further, it needs to be reiterated that the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. has to be exercised with a great deal of caution; while considering a prayer for quashing of a complaint/FIR, the Court has to just restrict itself to see whether on a perusal of allegations levelled, the offence alleged is made out or not.

5. The complainant has levelled specific allegations against the petitioner, claiming that she had issued the cheques in question as to fulfil the conditions of payment outlined in the MOU, given that her husband had failed to meet those obligations. The petitioner has contended that she did not challenge the cheques in question during a hearing before the Court of learned ADJ Saket, New Delhi. Nevertheless, the petitioner is a signatory of all the cheques. In the light

of the aforementioned circumstances, a presumption under Section 139 of the NI Act arises in favour of the complainant and prima facie the commission of an offence under Section 138 of the NI Act is made out against her. Furthermore, learned counsel for the petitioner has drawn the attention of this Court to MOU (Annexure P-2) in which it is stated that the husband of the petitioner was to make a payment of ₹6 lakhs on 01.12.2017 to respondent No.2 through a demand draft and an additional sum of ₹6 lakhs on 20.12.2017 through another cheque, after obtaining possession of the specific portion of the flat. The petitioner has not disputed her liability to make initial payment of ₹6 lakhs. On page 8 (iii) of the paper book, the petitioner has rather acknowledged that due to her estranged husband's non-compliance with the MOU, her liability is limited to ₹6 lakhs.

6. Regarding the assertion made by learned counsel for the petitioner about forgery of her signature or the dispute over the handing over of the property to her husband, these are disputed questions of fact and can be delved into only during trial, when the parties adduce their evidence.

7. As a sequel to the above, this Court does not find any merit in the instant petition, which is dismissed accordingly.

8. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

13.10.2023

(MANJARI NEHRU KAUL)

Vinay

JUDGE

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