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

Sr. No.120

Date of Decision : March 20, 2023

1.

CRM-M-13329-2023

M/s Ocean Seven Buildtech Pvt. Ltd.

...Petitioner

Versus

Shri Bhagwan and another

...Respondents

2.

CRM-M-13373-2023

M/s Ocean Seven Buildtech Pvt. Ltd.

...Petitioner

Versus

Shri Bhagwan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Amit Jain, Advocate, for the petitioner.

SUDHIR MITTAL, J. (ORAL)

This order shall dispose of aforementioned two cases as the similar questions of facts and law are involved therein. The facts are being taken from CRM-M-13329-2023.

The petitioner is the accused in a complaint filed under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). The respondent had presented a cheque dated 10.06.2021 for a sum of Rs.2 crores but the same was dishonoured. Notice under Section 138 of the Act was issued and was replied stating that there was no legally enforceable debt on the date of presentation of the cheque as the said amount having been paid earlier by way of two demand drafts and one cheque (which had been encashed). The cheque amount having not been paid within the notice

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period, the aforementioned complaint was filed and the petitioner was summoned. Aggrieved with the summoning order, a revision was filed which was dismissed vide order dated 15.12.2022, thus, the present petition has been filed for quashing the summoning order, revisional order as well as the complaint.

Learned counsel for the petitioner has submitted that the filing of the complaint is a gross abuse and misuse of the process of the criminal Court. The petitioner had entered into an agreement with the respondent for development of his land and in terms thereof certain payments had to be made to him. Cheque was issued only as a security cheque. The money due to be payable under the cheque had been paid in advance and the cheque was to be returned, however, the respondent became dishonest and presented the same. The factum of payment has been mentioned in the reply to the legal notice. There being no legally enforceable debt as on date of presentation of the cheque, the complaint deserves to be quashed along with all consequential orders. Reliance has been placed upon *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and another, 2023(1) R.C.R. (Criminal) 408, CTC Plaza International and others vs. M/s Trendz, 2014(7) R.C.R. (Criminal) 1644* as well as *Ramesh Sodhi vs. Vimal Kapoor, 2009(5) R.C.R. (Criminal) 460*.

In my considered opinion, the submission is misconceived. Whether payment of the cheque amount had been made in advance is a matter of evidence. The petitioner will have to produce relevant evidence to establish his case and for this purpose, he shall have to lead defence evidence. Thus, it cannot be said that the contents of the complaint do not reveal any offence and that the filing thereof is a gross abuse and misuse of

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the process of the criminal Court.

In ***Dashrathbhai (supra)***, the Hon'ble Supreme Court was deciding an appeal filed against a judgement of acquittal passed by the Courts below. It is thus not attracted to the facts of this case as there is no observation regarding the maintainability of a complaint under Section 138 of the Act. Post completion of the trial, the petitioner may be acquitted but he cannot seek quashing of the complaint itself at this stage. The judgment in ***CTC Plaza (supra)*** is also not applicable as in the said case the cheque in dispute had been presented twice. First time, after the dishonour, the amount had been paid and thus, it was held that second presentation was an abuse and misuse of the process of the criminal Court. This is not the situation in the present case. Similarly, ***Ramesh Sodhi (supra)*** is also not applicable because in that case, pursuant to issuance of legal notice by the complainant, the cheque amount had been paid through demand draft.

For the reasons aforementioned, the petitions have no merit and are dismissed.

The petitioner is however at liberty to file an application for exemption from personal appearance during the course of the trial.

March 20, 2023
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No