IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

118 **2023:PHHC:065294**

CRM-M-20375-2023 (O&M)
Date of Decision: 25.04.2023

MONICA MENDIRATTA

... Petitioner

VERSUS

DHARMENDER

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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Present: Mr. Rajesh Malik, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J. (ORAL)

Instant petition has been filed for quashing/setting aside the summoning order dated 29.02.2020 (Annexure P-1) whereby the JMIC, Bhiwani has summoned the petitioner to face trial for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

The crux of the matter is that the petitioner informed her banker i.e. Canara Bank, Haus Khas Market Branch, Delhi with regard to loss of cheque No.456086 and also claims to have filed a complaint with the police with regard to the same. However, in the year 2020, a complaint is filed by the respondent qua dishonour of the abovesaid cheque due to the reason of "stop payment." The trial Court passed summoning order against the petitioner, which is the subject matter of challenge herein. Prior to filing of complaint, the respondent had served a legal notice dated 29.01.2020 upon the petitioner which was duly replied by her vide reply dated 07.02.2020.

Consequently, the respondent preferred a complaint under Section138 of the N.I. Act, 1881 against the petitioner.

The petitioner has challenged the impugned summoning order on the ground that the respondent was never known to her and she never met him in her entire life. Hence, the question of issuing cheque in his favour does not arise at all. Moreover, she has already lodged a complaint qua the loss of cheque with her banker as well as the police station concerned. Hence, she claims that the summoning order is bad in law and is not sustainable.

I have heard the learned counsel for petitioner at length and have gone through the material available on record with his able assistance.

At this stage, the only grievance of the petitioner is against the summoning order dated 29.09.2020 (Annexure P-1) vide which she has been summoned to face trial for the commission of offence punishable under Section 138 of the N.I. Act, 1881. The main submission advanced by the learned counsel for the petitioner is that the respondent-complainant has filed a false complaint, whereas no cheque was issued by the petitioner in his favour. She also supported her claim by dint of various documents such as acknowledgement issued Canara Bank, bank statements, complaint lodged with the police station concerned etc.

However, this Court is of the opinion that the petitioner appears to have moved before this Court in haste; because the remedy of challenging the impugned order lie before the Sessions Court, which the petitioner has not availed. Even otherwise, passing of summoning order does not mean that the summoned person has been held guilty of any offence. It is rather an opportunity of hearing being granted to the persons summoned. It is merely passed on the basis of a *prima facie* evidence, which has no conclusive value of its own. The material produced before this Court appears to *prima facie* supporting the case of the petitioner, however, at this stage, it would be a disputed question fact that whether the said documents are genuine or not. In order to prove said documents, affirmative evidence is required to be led. The authors/ propounders of the said documents are required to be examined and cross-examined. Only then the truth may prevail. The petitioner may produce and prove all her contentions before the trial Court by leading appropriate evidence. Apparently, the petitioner appears to have all supportive evidence in her favour, then what is a hitch for her to appear before the trial Court, lead evidence, prove her innocence and obtain acquittal.

Furthermore, it is well settled law that no detailed reasons are required to be given at the time of passing summoning order. Mere finding of *prima facie* case is sufficient to pass a summoning order. It is just an inference of a *prima facie* case and not a final finding of conviction. The material on record sufficiently makes out a *prima facie* case against the petitioner and as such there is no illegality or perversity in the impugned order passed by the Court below.

At this stage before the High Court, the petitioner is required to point out any illegality, impropriety or perversity in the impugned order. She has to point out that as to how and in what manner, the impugned summoning order is bad in law. The merits and/or demerits of the case cannot be gone into at this stage without there being any affirmative evidence on record.

In view of the above, filing of the present petition appears to be a mischievous and callous act on the part of the petitioner and the same has been filed in a clandestine manner in order to defeat the ends of justice. Such a practice ought not to have been permitted or promoted.

Consequently, this Court is of the considered opinion that the instant petition is devoid of merits and as such, deserves to be dismissed with heavy costs.

Accordingly, the same is hereby dismissed with costs of Rs.50,000/- on the petitioner for having filed such a frivolous and baseless petition and wasting the precious time of the Court. Costs be deposited with Widow's Welfare Fund created by Punjab and Haryana High Court Bar Association.

(SANDEEP MOUDGIL)
JUDGE

25.04.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No