

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

CRM-M-40433-2017

Date of Decision : 09.05.2023

Himesh Raj Sabhlok

..... Petitioner

Versus

Ishan Sharma

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

None for the respondent.

VIKRAM AGGARWAL, J (ORAL)

1. Prayer in the present petition, preferred under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') is for quashing of the criminal complaint case No.9193 dated 23.08.2017 titled as 'Ishan Sharma vs. Himesh Raj Sabhlok', filed under Section 138 read with Section 142 of the Negotiable Instruments Act (for short 'the N.I.Act'), the summoning order dated 23.08.2017 (Annexure P-8) and all subsequent proceedings arising therefrom.

2. The facts, in brief, are that a complaint (Annexure P-5) was filed by the respondent-complainant under Section 138 read with Section 142 of the N.I.Act on account of dishonour of a cheque bearing No.082759 dated 06.03.2017 for a sum of Rs.2,36,613/- issued by the present petitioner in

discharge of his legal liability. On the basis of the preliminary evidence, summoning order dated 23.08.2017 (Annexure P-8) was passed. The present petition has been filed laying challenge to the complaint as also to the summoning order.

3. Vide order dated 27.10.2017, notice of motion was issued in the present petition. However, no one appeared on behalf of the respondent despite service.

4. I have heard learned counsel for the petitioner.

5. Learned counsel for the petitioner has strenuously urged that the continuation of the complaint as also the summoning order passed by the trial Court are an abuse of the process of law since the amount in dispute had been transferred to the account of the respondent through RTGS transaction on the very day on which the cheque was dishonoured i.e. 20.03.2017. Reference in this regard has been made to the statement of account from which the cheque in question was issued (Annexure P-1). It has further been contended that a reply to the legal notice dated 06.07.2017 (Annexure P-2) was duly given on 19.07.2017 (Annexure P-3) in which it was mentioned that the amount in dispute stood deposited in the account of the respondent-complainant. Reference has also been made to the receipt of the registered cover which is on record as Annexure P-3 (colly) as also to the delivery report (Annexure P-4) stating that the said reply to the legal notice was duly delivered to the respondent-complainant. Learned counsel has referred to the provisions of Section 138 of the N.I.Act and has submitted that once the amount in dispute stood deposited and this fact was also brought to the notice of the respondent-complainant by way of reply to the legal notice, the complaint under Section

138 of the N.I.Act would not be maintainable. Learned counsel has also submitted that the respondent-complainant has chosen not to appear before this Court despite notice having been issued by this Court to the respondent-complainant. It has been submitted that the matter is being adjourned by the trial Court since the proceedings had been stayed by this Court and learned counsel representing the complainant has been appearing before the trial Court which shows that the respondent-complainant was duly aware about the present proceedings but has chosen not to appear. Learned counsel has submitted that in view of the same, the present petition deserves to be allowed.

6. I have given my thoughtful consideration to the arguments advanced by learned counsel for the petitioner.

7. Before advertng to the merits of the case, it would be essential to note that the respondent-complainant has chosen not to appear before this Court despite service. On 27.10.2017, notice of motion was issued to the respondent-complainant and the trial Court was directed to adjourn the proceedings beyond the date fixed before this Court. The report of the Registry shows that the respondent-complainant had been served through the brother of Pardeep Kumar, special power of attorney, through whom the complaint had been filed. However, no one chose to appear. On 29.10.2022, this Court issued fresh notice to the respondent through the counsel representing him before the trial Court in pursuance to which a report was received that respondent-complainant had taken away the brief from the counsel. It appears that the respondent-complainant is trying to play hide and seek with the Court and is deliberately not appearing, more so when he had

been appearing regularly before the trial Court alongwith his counsel and the matter was being adjourned by the trial Court in view of the order passed by this Court on 27.10.2017.

8. Be that as it may, the statement (Annexure P-1) clearly shows that an amount of Rs.2,36,613/- was transferred to the account of the respondent-complainant Ishan Sharma on 20.03.2017. Since the respondent-complainant has chosen not to appear before this Court, this Court is placing reliance upon the documents furnished by the petitioner. Legal notice (Annexure P-2) was issued by the respondent-complainant to which reply (Annexure P-3) was sent by way of registered post again mentioning that a sum of Rs.2,36,613/- had been transferred to the respondent-complainant through NEFT and even the transaction was mentioned. As per the status report (Annexure P-4), this communication was duly delivered to the counsel for the respondent-complainant but even thereafter, the complaint was filed.

Section 138 of the N.I.Act reads as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for ¹⁹ [a term which may be

extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

A perusal of the aforesaid provision shows that as per the *proviso* to Section 138 of the N.I.Act, three conditions have been laid down in the absence of which the provisions of Section 138 of the N.I.Act would not apply. The third condition is that the failure of the drawer of the cheque to make payment of the cheque amount to the payee or to the holder in due course of the cheque, as the case may be, within a period of 15 days of the receipt of the said notice. In the present case, the cheque amount was deposited in the account of respondent-complainant on 20.03.2017 while the legal notice (Annexure P-2) was issued on 06.07.2017 which essentially means that the amount had been deposited much before the issuance of the legal notice. Once the amount in dispute had been deposited in the account of

the respondent-complainant, no cause of action would arise for the respondent-complainant to file the complaint under Section 138 of the N.I.Act. A perusal of the complaint (Annexure P-3) further shows that no mention has been made with regard to reply to the legal notice having been received which also appears to be deliberate. It is, therefore, clear that the complaint filed by the respondent-complainant under Section 138 of the N.I.Act was not maintainable and consequently the summoning order passed can also not survive.

In view of the aforementioned facts and circumstances, the present petition is allowed and the Criminal Complaint No.9193 dated 23.08.2017 titled as ‘Ishan Sharma vs. Himesh Raj Sabhlok’, filed under Section 138 read with Section 142 of the Negotiable Instruments Act (for short ‘the N.I.Act’), the summoning order dated 23.08.2017 (Annexure P-8) and all subsequent proceedings arising therefrom are quashed qua the petitioner.

(VIKRAM AGGARWAL)
JUDGE

09.05.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No