

**203 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-41996-2016 (O&M)
Date of decision:16.03.2023

Dhiraj Kumar

... Petitioner

Vs.

Rajiv

... Respondent

2. CRM-M-1727-2017 (O&M)

Dhiraj Kumar

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

Present: Mr. Arun Takhi, Advocate for the petitioner(s).

Mr. Amit Rana, Sr. DAG, Punjab.

None for respondent in CRM-M-41996-2016.

...

MANJARI NEHRU KAUL, J. (ORAL).

This order shall dispose of **CRM-M-41996-2016** titled as Dhiraj Kumar Vs. Rajiv and **CRM-M-1727-2017** titled as Dhiraj Kumar Vs. State of Punjab & others as both the petitions have arisen from the same complaint. For the sake of convenience, the facts are being taken from CRM-M-41996-2016.

On the last date of hearing, there was no representation on behalf of respondent No.2 and the case was adjourned to 16.03.2023 i.e. today and the Registry had been directed to intimate the learned counsel for the respondent No.2 about the date fixed. As per office report, the learned

counsel for the respondent was duly intimated about the date fixed. However, despite the case having been called repeatedly, there is no representation on behalf of the respondent/complainant today as well. Therefore, this Court does not deem it fit to adjourn the case any further, more so, where there has been a stay operating with respect to the proceedings before the trial Court since 23.11.2016.

Both the petitions are thus being taken up today and being decided on merits.

Petitioner is seeking quashing of criminal complaint bearing No.NACT 926/2016 dated 11.03.2016 (Annexure P-5) titled as Rajiv Versus Dhiraj Kumar under Section 138 of the Negotiable Instruments Act and summoning order dated 02.06.2016 passed by learned Judicial Magistrate 1st Class, Jalandhar at Annexure P-6.

Learned counsel appearing for the petitioner *inter alia* submits that the petitioner had entered into an agreement in the year 2015 with the respondent for a sum of Rs.15 lakhs, who is a travel agent, for sending the former abroad. The petitioner paid a sum of Rs.10 lakhs in cash and issued the cheque in question as security towards the remaining amount of Rs.5 lakhs, on being so, asked by the respondent. On receipt of the above amount, the respondent arranged an interview for the petitioner with the Embassy of USA at Delhi, for which an interview letter was also given to him (Annexure P-1). However, surprisingly, the interview was cancelled just a day prior to the date fixed. Therefore, the petitioner became suspicious and demanded that the respondent return his money along with the blank cheque and all other documents which had been given to him. The accused, however, flatly

refused to do so. Thereafter, on the very next day i.e. 11.12.2015, the petitioner moved an application (Annexure P-2) before the Branch Manager of the Bank where he was maintaining his account and requested him to stop payment of the cheque in question to the respondent. Learned counsel asserted that once the petitioner had asked his bank to stop payment to the respondent, the deal entered into between the parties would be deemed to have stood cancelled and thus, in the above background, there would have been no occasion for him to issue the cheque in question in favour of the respondent on 11.12.2015. Learned counsel argued that it was, thus, evident that the respondent by misusing the cheque in question had filed a frivolous complaint on false and fabricated allegations. Learned counsel still further vehemently argued that the cheque in question was not issued in discharge of any legally enforceable debt or liability, hence, the complaint as well the summoning order dated 02.06.2016 passed by learned Judicial Magistrate 1st Class, Jalandhar at Annexure P-6, deserved to be quashed as it was on the face of it, a blatant misuse of process of law.

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

Learned counsel for the petitioner has raised disputed questions of fact which cannot be appreciated by this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. Whether the cheque in question was issued in discharge of any legally enforceable liability/debt or not, or under what circumstances, or still further whether there had been some misuse of the cheque in question by the respondent, are all a question of trial, which would be adjudicated upon by the trial Court, after the parties have led their

respective evidence. This Court cannot be expected to delve into the merit of the submissions made by the counsel at this stage.

It would be pertinent to notice here that the petitioner has not disputed his signatures on the cheque in question and rather admitted that the cheque in question was given to the respondent by him, hence, statutory presumption under Section 139 of the Negotiable Instruments Act would arise in favour of the respondent which he would be able to rebut only during trial.

In the above facts and circumstances, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.P.C. and quash the impugned Complaint No.NACT 926/2016 dated 11.03.2016 (Annexure P-5) and summoning order dated 02.06.2016 (Annexure P-6).

Dismissed.

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

(MANJARI NEHRU KAUL)
JUDGE

16.03.2023

harjeet

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |