

Deepak Mehta

...Petitioner

VS

Harjeet Kaur and another

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Bhrigu Dutt Sharma, Advocate,
For the petitioner.

Mr. Ashutosh Hoshiarpuri, Advocate,
For respondent No.1.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

The instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of criminal complaint (Annexure P-1) filed under Section 138 of Negotiable Instruments Act, 1881 (for short, 'NI Act') and summoning order dated 02.04.2013 (Annexure P-2) passed by learned Judicial Magistrate First Class, Jalandhar and also order dated 10.12.2014 (Annexure P-8) vide which application filed by petitioner to discharge him on payment of the entire amount of cheque along with an additional amount of Rs.5000/-, was also dismissed.

2. Succinct facts of the present case, as noted in the impugned complaint, are as under:

"2. That an accused Deepak Mehta gained confidence of the complainant while performing the jobs as contractor for wood work, aluminum work and glass fitting work of the complainant. The accused Deepak Mehta even took a contract for carpenter's job with Bakshi Enterprises run by Taranjeet Bakshi, son of the complainant and he had been performing the job of glass fittings for the complainant on contract basis. The accused was in need of money and made the complainant to give him financial help/financial assistance to the tune of Rs5 lacs. This happened in the month of November 2010. The complainant parted a sum of Rs. 5 lacs on 31.12.2010 and the accused assured the complainant to return the said amount to the complainant within a period of one month. The complainant approached the accused and asked him to return the amount and accordingly the accused issued a cheque of Rs. 5 lacs i.e. on 7.2.2011. Reference is made to cheque bearing No. 163635 i.e. dated 7.2.2011 for Rs. 5 lacs drawn on Uco Bank, Gurmandi, Jalandhar. The said cheque was dishonoured and the complainant had to file a complaint under Section 138 of Negotiable Instrument Act. Reference is made to the

complainant dated 15.4.2011, which was filed on 16.4.2011. The said complaint was pending in the court of Mrs. Tripatjot Kaur the then JMIC, Jalandhar.

3. *That on 26.7.2012 during the pendency of the complaint mentioned above, the accused induced, the complainant and gave false assurance to the complainant, made the complainant to withdraw the complaint and while giving assurance to the complainant to pay a sum of Rs.3,50,000/- From the said amount of Rs. 3,50,000/- the accused paid Rs.1,00,000/- by way bank draft and remaining amount of Rs.2,50,000/- vide five cheques of Rs50,000/- each. Reference is made to cheques nos. 642964, 642965, 642967 and 642968 amounting to Rs.50,000/- each, two cheques of Rs. 50,000/- given by the accused have been encashed by the complainant. The cheque in question was issued by the accused against the legally enforceable debt.*

4. *That the accused at the time of issuance of the said cheques assured the complainant, made false assurance that the same shall not be dishonoured. On his assurance the complainant presented the cheque bearing no.642964 dated 26.11.2012 of Rs.50,000/-, drawn on the Jalandhar Central Cooperative Bank Limited, but the said cheque has been dishonoured with the remarks "FUNDS INSUFFICIENT". The intimation with regard to dishonoring of the cheque in question received vide intimation letter of the bank dated 22.12.2012. The original cheque in question, and letter of intimation are attached.*

5. *That as provided under the act, the complainant got issued legal notice under section 138 of Negotiable Instrument Act.*

3. From the facts as pleaded in the complaint, it is borne out that cheque in question for an amount of Rs.50,000/- was given as part payment towards instalment to be paid for an earlier cheque for total liability of Rs.5 lakh. On a Court query, learned counsel for the complainant submits that rest of the cheques were honoured but this cheque was dishonoured, he was forced to once again file proceedings against the petitioner *qua* dishonour of the cheque.

4. Ultimately, what survives for adjudication is whether or not petitioner is liable to satisfy legally enforceable debt *qua* him for which he had issued cheque in question? It appears that the petitioner very candidly admitted his liability not only before learned trial Court and he offered to pay cheque amount at the very threshold but the same was not accepted by the complainant. It so appears for reasons known to the complainant/respondent No.1 he is more in a mood of revenge against petitioner, rather than seeking recovery of the outstanding amount.

5. In the premise, learned trial Court had no choice but to proceed further in the matter. During pendency thereof, while proceeding further in the matter compelling

the petitioner to approach this Court to seek quashing of the summoning order and vide order dated 11.02.2015, while issuing notice of motion, a coordinate bench of this Court passed an order dated 11.02.2015 as below:-

*Heard.
Notice of motion be issued to the respondents, returnable for
12.03.2015.
At the same time, the proceedings before the trial Court are
hereby stayed till further orders.*

6. *Apropos*, matter was taken from time to time on various hearings and the same was getting adjourned for some reason or the other. A coordinate Bench of this Court in order to settle the dispute amicably between the parties directed the petitioner to pay a sum of Rs.70,00/- as against earlier 50,000/- offered by him before learned Trial Court, as is borne out from order dated 13.12.2022, which is as below:

*In order to settle the dispute between the parties amicably,
the petitioner is directed to pay an amount of Rs.70,000/- to respondent
No.1.
Learned counsel for the parties seeks time to get instructions
in this regard.
Adjourned to 10.01.2023.*

7. On resumed hearing today, this Court also explored the possibility of settlement offered and asked the complainant to accept the amount of Rs.70,000/- which the petitioner is willing to pay as on today but the complainant flatly refused to accept the money and submits that he wishes to continue with the proceedings under Section 138 of the NI Act.

8. In the premise, it is clearly borne out that previous order dated 13.12.2022 supra, is as per the mandate of statute as prescribed under Section 138 NI Act i.e., either the fine which may extend upto twice the amount of cheque or imprisonment which may extend upto two years or both.

8.1. As observed above, needless to say that directions of the Court dated 13.12.2022 amount to imposing a fine of Rs.20,000/- in addition to the payment of principal liability in terms of Section 138 NI Act and the complainant has not accepted at his own peril.

9. Complainant remains adamant to not accept the principal amount of Rs.50,000 along with fine of Rs.20,000/-. This Court is thus left with no choice but to quash the proceedings before learned Court below arising out of the complaint filed by the respondent.
10. In the totality of circumstances, order dated 13.12.2022 is made absolute and criminal complaint (Annexure P-1) and impugned orders dated 02.04.2013 and 10.12.2014 (Annexure P-2 and Annexure P-8 respectively) and all their subsequent proceedings arising therefrom are quashed in view of the aforesaid.
11. Disposed of accordingly.
12. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

03.08.2023
Vandana

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