2023:PHHC:037345

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

CRM-M-51805-2018
Decided on : 02.03.2023

Kamal Kant Dewan ...... Petitioner

Versus

ICICI Bank Ltd. ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Aditya Grover, Advocate
for the petitioner.

Mr. Amit Kumar Goyal, Addl. PP, UT, Chandigarh.

Mr. Sandeep Suri, Advocate and
Mr. Vijiyesh Malhotra, Advocate
for the respondent-Bank.

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<u>Manjari Nehru Kaul, J.(Oral)</u>

The petitioner is seeking quashing of complaints No.3471/2018, 3472/2018, 3473/2018 and 3474/2018 (Annexures P-1 to P-4) filed on 15.03.2018 under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') along with summoning order dated 16.03.2018 (Annexures P-5 to P-8) passed by the trial Court in respect of each of above complaint.

Learned counsel for the petitioner, at the outset, submits that since the cheques involved in all the four impugned complaints relate to a single home loan transaction, a common petition under Section 482 Cr.PC has been filed.

On merits, learned counsel for the petitioner contends that in the year 2012, the petitioner availed a housing loan amounting to Rs.10 crores from the respondent-bank. At the time when the loan was rendered, the respondent-bank, among other documents also took a number of undated signed cheques from the petitioner as security, towards the loan advanced to him. While inviting the attention of this Court to Annexure P-9, learned counsel submits that it stood reflected therein that an authorized representative of the respondent-bank had tendered receipt on the copy of the undated cheques from which it was clearly discernible that those cheques had been later on misused by the respondent-bank more so when they had been handed over to them much prior to the date of the alleged issuance. Learned counsel has also vehemently argued that the ingredients to attract the mischief of Section 138 of the Act were missing in the instant case as there was no existing legal liability of the petitioner towards the respondent-bank, on the date when the cheques were allegedly issued by the petitioner. Learned counsel still further contends that a perusal of the order dated 21.09.2018 (Annexure P-13) passed by District Magistrate clarifies that since the parties had agreed to amicably settle their dispute and to further settle the loan closure amount, the liability of the petitioner could not be said to have accrued as the settlement amount was yet to be agreed upon.

Learned counsel for the respondent, on the other hand, has *inter alia* contended that no authorized representative of the respondent-bank ever gave any receipt (Annexure P-9) on the undated cheques. In fact, the said annexure (Annexure P-9) was a mere photocopy and there was neither any stamp nor even the name of the official, who allegedly put his signatures as receipt on the undated cheques. Hence, the said documents, on the face of it, were unreliable. Learned counsel still further submits that even otherwise, it is settled law that merely because a cheque had been given as security, it would not render it invalid. Learned counsel has also submitted that the loan accounts of the petitioner were declared Non-Performing Asset (NPA) much prior to the issuance of the cheques in question as he had failed to pay the outstanding loan amount. Therefore, once the petitioner had defaulted in making payments and his accounts had been declared NPA, the legal liability of the petitioner stood accrued. It has also been submitted that merely because the parties at some point of time had explored the possibility of some settlement, would not imply that there was no legal liability of the petitioner in existence, rather an inference could be safely drawn that the petitioner was trying to settle the matter because he was conscious that he had a legal liability to pay the debt, which was outstanding towards the respondent-bank.

Heard learned counsel for the parties and perused the relevant material available on record.

Before proceeding further, it would be pertinent to observe here that while exercising its inherent jurisdiction under Section 482 Cr.PC, this Court cannot be expected to appreciate evidence and conduct a mini trial.

In the case in hand, the petitioner while relying upon various documents has argued that there was no legal liability of the petitioner, which would in any manner, attract an offence under Section 138 of the Act. It has also been stated by the learned counsel for the petitioner that the cheques were received by the respondent-bank at the time when loans were advanced by it. The respondent-bank, on the other hand, has vehemently disputed the aforesaid contentions. Therefore, since there are disputed questions of fact raised by the parties, they can only be decided once the parties lead their respective evidence during trial. Quashing of a complaint is a serious and drastic measure and without giving any opportunity to the parties to lead evidence in support of their respective stand, this Court would desist from exercising its inherent jurisdiction under Section 482 Cr.PC.

Accordingly, the present petition being devoid of any merit, stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

02.03.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No