

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

**CRM-M-37513 of 2021
Reserved on 11.09.2023
Pronounced on: 08.12.2023**

RAJIV KUMAR GUPTA

... Petitioner

Versus

SONU KADYAN

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Rahul Jaiswal, Advocate
for the petitioner.

Mr. Viren Jain, Advocate with
Ms. Alisha Soni, Advocate
for the respondent.

SANJIV BERRY, J. (ORAL)

The instant petition has been preferred by the petitioner under Section 482 of the Code of Criminal Procedure for seeking quashing of complaint No.199 of 2018, dated 17.09.2018, titled as “*Sonu Kadyan Vs. Rajiv Kumar Gupta*” (Annexure P-1) whereby petitioner has been summoned for commission of offence punishable under Section 138 of the Negotiable Instruments Act, vide order dated 05.12.2018 (Annexure P-2), passed by learned Additional Civil Judge (Sr. Division)-cum-Sub Divisional Magistrate, Samalkha, and all subsequent proceedings arising therefrom.

2. In nutshell, the brief facts of the case are that a complaint under Section 138 of the Negotiable Instrument Act (hereinafter referred to as the

‘N.I. Act’ in short) has been filed before learned Additional Civil Judge (Sr. Division)-cum-Sub Divisional Magistrate, Samalkha, stating that petitioner and the complainant were known to each other. Petitioner was working as Asst. Engineer, (Broadcasting) at New Broad casting House, Parliament Street, New Delhi. Petitioner had disclosed that he had good relations with higher officers in Radio Station and permanent posts of clerks are lying vacant there, if the complainant is willing to get permanent employment as clerk he will have to pay ₹10,00,000/- to the petitioner and the complainant consented to the same. Complainant arranged ₹7,20,000/- and paid to the petitioner and assured to pay rest of amount of ₹2,80,000/- after issuance of appointment letter. When the petitioner was unable to provide the appointment letter for the post of clerk, complainant visited the office of the petitioner and asked him to handover the appointment letter or to return amount of ₹7,20,000/- upon which the petitioner issued a post dated cheque bearing No. 749171 dated 12.07.2018 amounting to ₹7,20,000/- drawn in favour of Punjab National Bank. Complainant presented the said cheque before the Bank and the same was returned with the remarks “ACCOUNT FREEZE”. Complainant contacted the petitioner and informed him about dishonour of the cheque and requested him to refund his money but the petitioner did not pay any heed. Hence the complainant filed complaint No.199 of 2018, dated 17.09.2018, titled as “*Sonu Kadyan Vs. Rajiv Kumar Gupta*” (Annexure P-1) and vide order dated 05.12.2018, (Annexure P-2) learned Court of Additional Civil Judge (Sr. Division), cum-Sub Divisional Magistrate Samalakha, summoned the accused/petitioner. Aggrieved by the

same, petitioner, filed the present quashing petition.

3. It is contended by learned counsel for the petitioner that the case of the complainant himself is that he had given an amount of ₹7,20,000/- to the petitioner, as the petitioner had promised to get the complainant appointed permanently as Clerk in the Radio Station. Since the complainant did not get employment, he requested the petitioner either to get him an appointment letter or to refund the amount. The petitioner had issued a post dated cheque, which upon its presentation was dishonored.

4. Learned counsel for the petitioner further submits that it is only on account of a legal enforceable liability that provisions of Section 138 of the Negotiable Instrument Act would come into play and that since the amount in the instant case had been given for the purpose of securing employment, the repayment of the said amount would not attract any criminal liability. Learned counsel in order to put forth his aforesaid submissions placed reliance on the law settled in ***Virender Singh Vs. Laxmi Narain, 2007 (3) RCR (Criminal) 157*** wherein, it was held that complainant paying ₹80,000/- to the accused for securing government job; accused failed to arrange job and paid back the money by way of cheque; cheque dishonoured; accused not liable under Section 138 of the N.I. Act as the agreement was unlawful. He has further referred to ***Sita Ram v. Radha Bai, 1968 AIR (SC) 534; Mohd. Salimuddin v. Misri Lal, 1986 AIR (SC) 1019; and J. Daniel v. State of Kerala, 2005(4) R.C.R. (Criminal) 952.*** and hence he prays for acceptance of the present petition.

5. Learned counsel for the respondent opposes the instant petition

and contends that even the petitioner himself has accepted to have received the payment amounting to Rs. 7,20,000/- from the complainant for which later he issued the cheque in question, which was dishonored on presentation, therefore, the petitioner should be held liable regarding dishonour of the cheque in question and it would be unjust to the complainant if the petitioner is allowed to retain the same. He contends that the dispute in the present case is regarding the fact that the petitioner had issued a valid cheque under his signature for the return of the amount, however the same had been dishonored and the respondent had to file the complaint under Section 138 of the Negotiable Instrument Act, such agreement to return the amount by the petitioner to the complainant was not in any way tainted by any illegality and as such is enforceable in the eyes of law. He further refers to the judgment rendered in ***R.L. Sahu vs. Moh. Tahir Shekh, 2012 (8) RCR (Criminal) 1514*** and ***E.K. Saseendra Varma Raj vs. State of Kerala, 2009 (5) RCR (Criminal) 267.***

6. I have heard the respective submissions made by the learned counsels, representing the petitioner as well as the respondent.

7. Considering the respective submissions, it transpires that by way of present petition the petitioner has challenged the impugned complaint filed by the respondent under Section 138 of the Negotiable Instrument Act and the consequent summoning order (Annexure P-2) whereby the petitioner had been summoned to face the trial. The contentions put forth by the petitioner are that the amount of ₹7,20,000/- as mentioned in the cheque was given by the respondent-complainant to the petitioner for

getting him permanently appointed as Clerk in Radio Station and since the job could not be provided to the complainant he requested the petitioner to either get him appointment or repay the amount and therefore, the petitioner issued post dated cheque which upon presentation was dishonoured. As per the learned counsel for the petitioner issuance of cheque was not for discharging legally enforceable liability and therefore it would not attract any criminal liability under the Act. Whereas on the contrary as per the respondent-complainant since the petitioner had agreed to repay the amount taken by him for providing job to the complainant which he could not, therefore, the issuance of cheque in question by the petitioner to repay the amount has constituted a legally enforceable liability and there is no infirmity in the impugned order as otherwise petitioner will be discharged from his liability.

8. I have also considered the judgments referred to by both the parties, so far the judgments referred to as ***Virender Singh v. Laxmi Narain, (Delhi): 2007 (3) R.C.R. (Criminal) 157; and J.Daniel Vs. State of Kerala, 2005(4) R.C.R. (Criminal) 952;*** are concerned the same pertains to the case wherein after trial and appreciation of offence the learned trial Court had passed final judgment on the complaint under Section 138 of the Negotiable Instrument Act, which is not so in the present case, as in the present case only summoning order has been passed and the parties are yet to lead evidence so at this stage the petitioner cannot take any benefit from the same at this stage, the other judgments referred to by the petitioner are distinguishable from the facts and circumstances of the present case.

9. Moreover, it is worth mentioning that Hon'ble Apex court has observed in recent judgment cited as ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and another***” 2022 SCC Online SC 513:-

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e the trial Court is ousted from weighing the material evidence. If this is allowed the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

10. Applying the preposition of law laid down in the aforementioned judgment of Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan's case (supra)***, it transpires that if at this preliminary stage without affording parties opportunity of adducing evidence and the learned trial Court will be ousted from weighing the material evidence, which would result in the accused being given un-merited advantage. However, it has been specifically held therein that when the cheque and the signatures are not disputed by the petitioner then because of the legal presumption the balance of convenience at this stage is in favour of the complainant and the accused petitioner will have ample opportunity to have defence evidence during the trial to rebut the presumption, therefore, the consequence scuttling the criminal process at pre trial stage would be irreparable. The

judgments referred by the learned counsel for the respondent are some what identical to the facts and circumstances of the present case in *E.K. Saseendra Varma Raj v. State of Kerala, 2009(5) R.C.R. (Criminal) 267*, in a similar set of circumstances while discussing the judgments of *Virender Singh V. Laxmi Narain, 2007(3) RCR (Criminal) 157*; *J.Daniel v. State of Kerla and another, 2005 (4) RCR (Criminal)* it has been observed that once the amount has been agreed to repay by the accused and he issues the cheque under his signature then this agreement to return the money was not in any way tainted by any illegality as by doing so the accused was infact agreed to disgorge his ill gotten gains and the cheque so received by him was thus for the discharge of legal enforceable liability.

11. Taking into consideration the aforesaid aspect and also the finding of Hon'ble Apex Court in *Rathish Babu Unnikrishnan's case (supra)*, since the case is at initial stage wherein the petitioner had been summoned vide the impugned order dated 05.12.2018 (Annexure P-2) and the parties are yet to lead evidence, at this stage, no infirmity whatsoever could be observed in the impugned order. As a consequent finding no merit, the petition is hereby dismissed.

12. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

08.12.2023

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i)	Whether speaking/reasoned?	Yes
ii)	Whether reportable?	Yes