

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

CRM-M-36539 of 2023

Date of decision: 31st July, 2023

Shivya Kalia

Petitioner

Versus

Gurpreet Kaur Chawla

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manit Malhotra, Advocate for the petitioner.

AVNEESH JHINGAN, J (Oral):

1. This petition is filed seeking quashing of Complaint No. NACT-21505-2022 dated 26.7.2022 and summoning order dated 15.9.2022.
2. The case set up is that the complainant is engaged in the business of sale of iron and steel. There were business transactions between the parties. After payment of Rs.5,00,000/- and Rs.3,00,000/-through NEFT and RTGS on 19.1.2022 and 11.2.2022 respectively, the petitioner issued six cheques totalling to Rs.24,14,911/-drawn on UCO Bank, Industrial Area, Jalandhar for discharge of liability. On presentation, the cheques were returned with the remarks “accounts closed”. After serving legal notice dated 21.6.2022 complaint was filed.
3. The complainant in the preliminary evidence tendered his affidavit and produced documents Ex.P1 to P28. The Judicial Magistrate being satisfied that *prima facie* case is made out, summoned the petitioner vide order dated 15.9.2022.

4. The application filed by the petitioner for discharge was dismissed on 7.7.2023 as not maintainable.

5. Learned counsel for the petitioner argues that the petitioner is disputing that the cheques are signed by him. It is further argued that body of the cheque is not filled by the petitioner. The contention is that after the return, cheques have been laminated with intention that signatures cannot be compared, hence the complaint and the summoning order be quashed.

6. It would be appropriate to note that the complaint is at an initial stage, summoning orders have been issued. The petitioner has not even taken a defence in the complaint disputing the signatures.

7. Another angle to be considered is that notice served by the complainant under Section 138(b) of the Negotiable Instruments Act, 1881 (for short, 'the Act') was not responded to. The issue as to whether cheques have been signed by the petitioner or not is a factual aspect for which evidence needs to be adduced.

8. It would be appropriate to note that the petitioner has filed a complaint under Sections 420 and 120-B IPC before Judicial Magistrate 1st Class, Jalandhar alleging that the complainant has committed fraud by filing the complaint under Section 138 of the Act and attaching laminated cheques.

9. It is undisputed fact that the petitioner has not challenged the order rejecting the prayer for discharge.

10. There cannot be dispute on the proposition that at the stage of summoning, the court has to satisfy itself vis-a-vis *prima facie* evidence adduced at the preliminary stage.

11. Caution is to be exercised while exercising power under Section 482 Cr.P.C. for quashing complaint at pre-trial stage. The Supreme Court in *Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) and another, 2022(2) Apex Court Judgments (SC) 585* held:

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in th realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.”

12. In spite of specific query during the course of hearing, no law has been cited that complaint under Section 138 of the Act should be quashed at the initial stage only on the ground that the cheques attached are laminated.

13. The ground that the cheques are not signed by the petitioner would be a defence available in the complaint. No evidence is produced to substantiate that the signatures of petitioner cannot be compared with signatures on the laminated cheques.

13. No case is made out for interference.

14. The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

31st July, 2023
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No