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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39188-2022 (O&M)

Date of decision: 05.09.2023

Surinder Singh

....Petitioner

versus

Vikesh Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Nitin Verma, Advocate for
Mr. Sameer Sachdeva, Advocate
For the petitioner.
Petitioner in person.

None for respondent No.1.

Mr. Viranjeet Singh Mahal, Additional P.P., U.T., Chandigarh.

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 complaint bearing No.NACT/2174/2021 titled *Vikesh Kumar Vs. Surinder Singh* dated 19.02.2021 (Annexure P-4) filed by respondent No.1 pending in the court of Learned Judicial Magistrate 1stClass, Chandigarh and to quash all the subsequent proceedings arising therefrom including summoning order dated 19.02.2021 (Annexure P-5).

2. Learned counsel for the petitioner submits that complaint was filed under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') by one Vikesh Kumar for dishonour of cheque No.97556 dated 29.12.2020 for an amount of Rs.19,000/- .He further contends that after filing of complaint, petitioner was summoned by Court of learned JMJC, Chandigarh, vide order dated 19.02.2021.

2.1. Learned counsel for petitioner further canvasses that on the very first date of hearing before learned Court below, the petitioner duly recorded his statement that he was and is always ready to pay the cheque amount but despite opportunities by the Court and efforts by the petitioner, respondent never turned up to receive the amount. Petitioner

finding no alternative, sent legal notices dated 08.03.2021 and 21.06.2021 (Annexures P-7 and P-8 respectively) to the respondent to receive cheque amount and/or provide the account number, but in vain. Thereafter petitioner approached his banker to provide information regarding the bank account and ultimately deposited the cheque amount in the account of respondent on 15.01.2022 (Annexure P-9). He further argues that during pendency of the proceedings, since entire amount in question was paid to Vikesh Kumar-complainant(Annexure P-9),therefore, no useful purpose would be served by keeping the present proceedings pending.

3. Despite service, none appears on behalf of respondent No.1-complainant. Since, respondent No.1 has chosen not to appear, it is deeming suggestive of the fact that he has no objection to the same.

4. On the other hand, learned State counsel submits that he has no objection to the same as the entire cheque amount has already been paid.

5. I have heard learned counsel for the parties and gone through the case file.

6. Perusal of the order dated 31.08.2022 passed by a co-ordinate Bench of this Court, while issuing notice of motion, would reveal that proceedings before learned Court below were ordered to be stayed as petitioner has already deposited the balance amount of Rs. 19000/- in the account of complainant on 15.01.2022.

7. Annexure P-3 is the petitioner's reply to the respondent's notice issued before filing the complaint under Section 138 of the Negotiable Instruments Act. In the said reply itself, the petitioner had offered to pay the cheque amount and also informed the complainant that he had filed a complaint against him for cheating and fraud. Receipt of this reply from the petitioner is admitted by the subsequently filed complainant in his complaint Annexure P-4 giving rise the impugned order. Instead of accepting the cheque amount before the filing of the complaint as offered by the petitioner, the respondent filed the complaint Annexure P-4, obviously as a counterblast to the petitioner's complaint against him for cheating and fraud. In any case, the petitioner has already paid the cheque amount on 15.01.2022 as shown by the debit entry in his bank account statement Annexure P-9. To my mind, the filing of the complaint Annexure P-4 by the

respondent is actuated by malice and the continuance of proceedings therein against the petitioner is a case of abuse of the process of law.

8. In view of aforesaid, I see no grounds as to why further proceedings under the complaint under Section 138 of the NI Act should continue as same would be an exercise in futility and wastage of precious time of learned Court below besides abuse of process of law.

9. In the totality of circumstances, complaint bearing No.NACT/2174/2021 titled *Vikesh Kumar Vs. Surinder Singh* dated 19.02.2021 (Annexure P-4) filed by respondent No.1 and all the subsequent proceedings arising therefrom including summoning order dated 19.02.2021 (Annexure P-5),are quashed in view of the aforesaid.

10. Petition is allowed accordingly.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

05.09.2023
Vandana

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