

CRM-M-43473-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(205)

CRM-M-43473-2022

Date of Decision:- 22.11.2023

Davinder Kumar

...Petitioner

VERSUS

State Bank of India

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Satish Jain, Advocate
for the respondent-SBI.

SUVIR SEHGAL, J. (Oral)

1. Short question that arises for consideration in the present petition is as to whether the State Bank of India (for short “the bank”), complainant-respondent is the payee or the holder in due course of the disputed cheque and is entitled to maintain a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I. Act”).
2. Factual position is not in dispute.
3. Accused-petitioner is the proprietor of M/s Kissan Sahara Centre and is also a partner, along with others, in M/s Shaktiman Bio Touch. Both the firms have business dealings *inter se* as well as with the bank. M/s Kissan Sahara Centre issued a cheque dated 01.02.2017 (for short “the disputed cheque”) drawn in favour of M/s Shaktiman Bio Touch for Rs.5 lacs, which on encashment, was dishonoured on account of insufficient funds. The bank issued legal notice dated 24.02.2017, Annexure P-3, and

instituted the impugned complaint under Section 138 read Section 142 of the N.I. Act, Annexure P-4, against the petitioner. By impugned order dated 30.03.2017, Annexure P-5, petitioner was summoned and upon his causing appearance, notice of accusation was served upon him and the trial was set in motion.

4. Petitioner has approached this Court by urging that the cheque was never issued in favour of the bank nor was it meant to discharge any liability. It is his argument that the bank is neither the holder nor the payee in due course and therefore cannot initiate proceedings under Section 138 of the N.I. Act.

5. Upon being served, petition has been contested by the bank by filing a reply, wherein it has been stated that the criminal process cannot be scuttled at the pre-trial stage particularly when there are factual aspects to be determined. It has been submitted that credit facility to the tune of Rs.85 lacs was extended to M/s Shaktiman Bio Touch, which became irregular. The bank initiated proceedings under the The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took physical possession of the factory premises. By letter dated 30.03.2017, Annexure R-1, petitioner as a partner of M/s Shaktiman Bio Touch undertook to liquidate all the outstandings and deposited an amount of Rs.1 lac in the Term Loan Account and agreed to liquidate the balance amount in installments. The cheque, in dispute, was given to the bank. It has been argued that the cheque was meant to discharge the liability of the bank. Counsel appearing for the respondent has placed reliance upon the judgment of the Supreme Court in **Rathish Babu**

Unnikrishnan Versus The State (Government of N.C.T. of Delhi) and another, 2022 (2) R.C.R. (Criminal) 871 to assert that Court should be slow in quashing complaint when factual controversy is in the realm of possibility.

6. I have heard counsel for the parties and considered their respective submissions.

7. It cannot be disputed that the bank is not the payee of the cheque as the cheque has been admittedly been drawn in the name of M/s Shaktiman Bio Touch. The term “holder in due course” has been defined in Section 9 of the N.I. Act and is as follows.

“9. “Holder in due course” means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it becomes payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.”

8. The reading of the Section makes the position crystal clear. As far as promissory note is concerned, holder in due course means a person, who for consideration becomes its possessor. In so far as a cheque payable to bearer is concerned, a person, who for consideration becomes its possessor, is a holder in due course, but in the case of a cheque payable to order, a person can be the holder in due course only if he is either the payee or the endorsee. There is nothing to show that the bank is endorsee of the cheque.

Although, the bank has placed reliance upon a letter, Annexure R-1, appended with its reply to take a stand that it is the endorsee, but the letter, does not meet the requirements of endorsement under Section 15 of the N.I. Act. The letter is definitely not intended to be completed as a Negotiable Instrument. The bank, therefore, cannot take the plea that it is the holder in due course of the disputed cheque under Section 9 of the N.I. Act as there is no endorsement in its favour. As the bank had not become the holder in due course, as such notice given by the bank would be of no consequence and does not satisfy the provisions of the N.I. Act.

9. As a consequence of the above discussion, instant petition is allowed. Impugned summoning order, Annexure P-5 as well as complaint, Annexure P-4, are quashed. Liberty is given to the bank to recover the loan, if due, by any other legally permissible modes.

10. There shall be no order as to cost.

(SUVIR SEHGAL)
JUDGE

22.11.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No