

119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43479-2023
Decided on : 01.09.2023

Harpreet Kaur

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kunal Choksi, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

1. Instant petition has been filed by the petitioner seeking quashing of complaint bearing No.COMA 18/2023 under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') (Annexure P-1), Summoning Order dated 06.01.2023 (Annexure P-2) and notice of accusation issued vide order dated 05.07.2023 (Annexure P-3) passed by SDJM, Nabha, District Patiala.

2. Learned counsel for the petitioner *inter alia* contends that it is a matter of record that the husband of the petitioner had lost a bag containing their original Aadhar Card, four signed cheques bearing Nos.000011, 000012, 000013 and 000014 of HDFC Bank and three signed blank cheques of the petitioner bearing Nos.386150, 386151 and 386152 drawn on State Bank of India, Branch GT Road, Sirhinda, photocopy of the registry of a shop, copy of jamabandi of the shop, photocopies of income tax return and certain other

valuables in which regard a DDR No.27 dated 14.10.2021 (Annexure P-4) was recorded at Police Station Sirhind. It has been further submitted that the petitioner had thereafter instructed her bank to stop payment with respect to the aforementioned lost cheques. Thus, it was improbable that the petitioner would have issued the same cheque i.e. cheque bearing No.386151 on 28.10.2022 to the complainant, and that too after a year of the lodging of the aforementioned DDR.

3. While drawing the attention of this Court to the certified copy of postal receipt (Annexure P-5), learned counsel has further submitted that the endorsement on the envelope indicated that “door of the petitioner was locked and she was not found at her house”. Thus, it was evident that the notice of demand was never served upon the petitioner. Learned counsel submits that since the demand notice is an essential prerequisite for maintainability of a complaint under Section 138 of the Act, the complaint in question and all subsequent proceedings could not be sustained in the absence of there being no proper service of statutory notice.

4. Learned counsel has further argued that on the face of it, it is evident that the complainant-respondent had misused the stolen cheque of the petitioner by filing a false and fabricated complaint against her. Still further, since the cheque of the petitioner had been stolen, it could be safely inferred that the cheque, which had been misused subsequently by the complainant was not issued in discharge of any legally enforceable debt or liability. A

prayer, therefore, has been made for quashing the complaint in question as well as subsequent proceedings as it is a blatant misuse of process of law.

5. Heard learned counsel and perused the relevant material on record.

6. Learned counsel for the petitioner has raised disputed questions of fact, which cannot be delved into by this Court in exercise of its inherent jurisdiction under Section 482 Cr.PC. Whether or not the cheque in question was issued in discharge of any legally enforceable liability or debt or still further, whether the statutory notice as mandated under Section 138 of the Act was served upon the petitioner, and furthermore, whether there had been any misuse of the cheque in question by the respondent-complainant are all questions of trial, which would be put to test after the parties lead their respective evidence before the trial Court. Charges already stand framed and the case is now posted for prosecution evidence. This Court would, therefore, not be inclined to delve into the truthfulness or otherwise of the allegations levelled by the complainant at this stage.

7. As a sequel to the above, the present petition being devoid of any merit stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

01.09.2023

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(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No