

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

CRM-M No.51125 of 2023 (O&M)
Date of decision: 9th October, 2023

Surjit Kumar

... Petitioner

Versus

Sunil Kumar Dalmia

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Dr. Rau P.S. Girwar and Ms. Archana Arora, Advocates
for the petitioner.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of Complaint dated 23.07.2019 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act') as well as the summoning order dated 23.07.2019 passed by learned Judicial Magistrate 1st Class, Bathinda.

2. Learned counsel for the petitioner inter alia contends that the petitioner has erroneously been summoned by the learned trial Court in total disregard to the statutory provisions. The complainant had, in fact misused the cheque in question given by the petitioner to him in the year 2019, which was evident from the fact that the cheque had been dishonored on the ground that "State Bank of Patiala cheques are not acceptable at SBI due to merger of SBOP in SBI" and not on account of insufficiency of funds. It has been further submitted that thus, there was

as such no dishonor of the cheque so as to attract any offence under Section 138 of the Negotiable Instruments Act, 1881. It has still further been submitted that it is also a matter of record that the State Bank of Patiala (drawer Bank) had already merged with State Bank of India, and therefore, the cheques of SBOP had become invalid. Learned counsel has still further contended that even the legal notice, which was served upon the petitioner by the complainant, reflected that the dishonor of the cheque was contrary to the reasons mentioned by the Bank in the Return Memo. It has, thus, been urged that in the absence of the primary ingredient to constitute an offence under Section 138 of the Act being amiss in the complaint in question, the instant petition deserved to be allowed.

3. I have heard learned counsel and perused the relevant material on record.

4. The Court has to be extremely circumspect while quashing an FIR/complaint and the powers are to be exercised with a great deal of restraint. The Court, while summoning an accused in a complaint case, has to just satisfy itself as to whether a prima facie offence is made out or not, from a reading of the complaint.

5. Before proceeding further, it would be apposite to reproduce here the provisions of Sections 138 and 139 of the Act.

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for

payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4[a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

139. Presumption in favour of holder.—*It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”*

6. Thus, what flows from the above extracted provisions is that at the initial stage, once the conditions of Section 138 of the Act are fulfilled, the presumption under Section 139 would arise in favour of the complainant, which would be sufficient to warrant the summoning of the accused.

7. Adverting to the case in hand, the petitioner has not disputed his signatures on the cheque in question and not even disputed that the cheque was issued in discharge of his legal liability. The petitioner himself has admitted issuance of the cheque to the complainant as well as the receipt of the legal notice (Annexure P-5). Rather, he has merely stated that the cheque had been returned on account of the State Bank of Patiala cheques not being acceptable at SBI due to the merger of SBOP with SBI, and thereafter, the cheque had been misused by the complainant. Whether the cheque has been misused by the complainant, or not is a question of trial, which would be adjudicated upon by the trial Court after both the parties lead their respective evidence. This Court cannot be expected to delve into the merits of the submissions made by the learned counsel for the petitioner at this stage. Trite to say, the presumption under Section 139 of the Act is rebuttable and it would

always be open for the petitioner to rebut this presumption while leading his defence evidence during trial.

8. As a sequel to the above discussions, there being no merit in the instant petition, the same stands dismissed.

9. 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.

(MANJARI NEHRU KAUL)
JUDGE

October 9, 2023

rps

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