IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-49267-2019
Reserved on: 16.10.2023
Pronounced on:18.10.2023

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Dr. Deepak Kapoor

. . . . Petitioner

Vs.

Major Singh

. . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. A.P. Bhandari, Advocate, for the petitioner.

None for the respondent.

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<u>DEEPAK GUPTA, J.</u>

By way of this petition filed under Section 482 CrPC, petitioner has prayed to quash complaint dated 16.10.2019 (Annexure P1) filed by the respondent in the Court of Ld. JMIC, Jalandhar bearing CIS No. NACT/4991/2019 titled 'Major Singh Vs. Dr. Deepak Kapoor' under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'], along with the summoning order dated 16.10.2019 (Annexure P7) and all the subsequent proceedings arising therefrom.

2. Perusal of the paper-book reveals that complaint (Annexure P1) was filed by respondent-Major Singh against the petitioner by alleging that accused (petitioner herein) had taken a friendly loan from him in January 2019 and in order to discharge the liability, accused-

petitioner issued cheque No.570937 dated 07.06.2019 amounting to ₹5 lakh drawn on Yes Bank, New Friends Colony, New Delhi from his account No.006991600000621. It was alleged further that on presentation, the cheque was returned vide memo dated 30.08.2019 with the remarks "payment stopped by drawer". It was alleged further that complainant sent a legal notice dated 05.09.2019 to the accused through registered post, but the accused neither responded to the notice nor made payment. With these allegations, complaint was filed on 16.10.2019 to summon and prosecute the accused-petitioner under Section 138 of the NI Act.

3. After recording preliminary evidence, ld. JMIC, Jalandhar issued process against the accused-petitioner vide order dated 16.10.2019 (Annexure P7).

4. (i) It is contended by ld. counsel that petitioner is a surgeon by profession having MBBS and MS degrees. He is practicing as senior consultant with Fortis Escorts Heart Institute, Okhla Road, New Delhi and is also a Visiting Consultant with various reputed hospitals in Delhi. His family consists of his Dr. wife, who is also a senior doctor and both of them are earning handsomely and there could be no question of obtaining any loan from the complainant-respondent. It is contended that petitioner is earning more than ₹2 lakh per month and there could be no question of raising any friendly loan and all the allegations are imaginative.

(ii) Still further, it is contended that cheque in question bearing No.570937 is alleged by the complainant to be dated 07.06.2019. In fact, the cheque book containing the leaf of cheque No.570937 was issued to the petitioner by the concerned bank on 01.12.2012 and thereafter, the petitioner got issued two more cheque books on 27.11.2013. Certificate in this regard issued by the Yes Bank is Annexure P8 and thus, the allegation that cheque was issued in June 2019 is apparently wrong.

(iii) Ld. counsel further contends that petitioner had written a letter to the Bank on 14.11.2019 asking about the status of the aforesaid cheque No.570937 and he was specifically informed on 16.11.2019 that no stop payment of the cheque had happened in the account of the petitioner either in August or September 2019. Copy of the bank letter in this regard is Annexure P9. Ld. counsel further contends that as per the Bank Memo Ex.C2 (Annexure P3 herein), relied by the respondent-complainant, cheque was presented on 29.08.2019 and the same was returned on 30.08.2019. However, respondent has forged the said document by showing it to be genuine because in fact the bank had not received any such cheque for encashment either on 29.08.2019 nor the same was returned on 30.08.2019. Rather, as per the bank account statement (Annexure P10), the cheque was presented on 11.06.2019 and the same was rejected on the ground of 'insufficient funds' on 11.06.2019 and thus, even the legal notice issued on 05.09.2019 is patently time barred and so, cognizance could not have been taken.

With all these submissions, prayer is made for quashing the complaint and the consequent summoning order.

5. Notice of motion to the respondent was issued. Respondent was duly served, but nobody made representation on his behalf.

6. Vide order dated 22.03.2023, this Court had directed the petitioner to produce bank memo to show as to when the cheque was dishonored in June 2019 and whether the complainant had received intimation in this regard or not and if so, on that date. In compliance of the order, ld. counsel for the petitioner-accused has placed on record a letter dated 15.07.2023 issued by the Yes Bank i.e., the banker of the petitioner, as per which cheque No.570937 for an amount of ₹5 lakh was received in Yes Bank on 10.6.2019 and the same was returned in inward return session dated 11.06.2019 with reason 'insufficient funds'.

7. Ld. counsel for the petitioner contends that this letter dated 15.07.2023 corroborates the averment of the petitioner that return memo dated 30.8.2019 (Annexure P3) has been forged by the respondent-complainant and that legal notice was issued beyond the time permissible by law.

8. I have considered submissions of ld. counsel for the petitioner and have appraised the record carefully.

9. Cheque in question bearing No.570937 for an amount of ₹5 lakh is dated 07.06.2019. As per copy of the bank memo, which was relied by the complainant-respondent before the trial Court as Ex.C2 (Annexure P3 in this paper-book), the date of the said cheque is 29.08.2019 and it was returned on 30.08.2019. Thus, apparently return memo (Annexure P3) appears to be forged document because cheque date therein is mentioned to be 29.08.2019, though date on the cheque Annexure P2 is 07.06.2019, which is also so mentioned in the complaint (Annexure P1).

10. Further, complainant alleged that cheque was dishonoured vide return memo dated 30.8.2019 for the reasons "payment stopped by drawer". However, as per the letter dated 16.11.2019 (Annexure P9) issued by Yes Bank i.e. banker of the petitioner, as addressed to the petitioner, no stop payment of cheque No.570937 happened in his account in the month of August or September 2019 and reason for cheque stop was 'lost'.

11. Death nail to the case of the respondent-complainant is caused by another letter dated 15.07.2023 issued by the Yes Bank, which reveals that in fact cheque No.570937 dated 07.06.2019 was received in the Yes Bank on 10.06.2019 and the same was returned with reasons 'insufficient funds' on 11.06.2019. This letter corroborates the case of the petitioner and is in consonance with the statement of bank account (Annexure P10). Thus, apparently the legal notice dated 05.09.2019 (Annexure P4) has been issued by the respondent-complainant to the petitioner-accused, much beyond the period of one month from the date of intimation regarding dishonour of the cheque, as permissible under law.

12. Thus, it is found that complaint clearly appears to have been filed on the basis of forged documents and by concealing the true facts from the Court concerned. As has already been noticed that despite notice of motion served upon the complainant, he chose not to contest the petition.

13. Consequent to all the reasons as discussed above, the complaint dated 16.10.2019 (Annexure P1) bearing CIS No. NACT/ 4991/ 2019 titled 'Major Singh Vs. Dr. Deepak Kapoor' under Section 138 read with Section 142 of the Negotiable Instruments Act, along with the

summoning order dated 16.10.2019 (Annexure P7) and all the subsequent proceedings arising therefrom, stand quashed.

Disposed of.

(DEEPAK GUPTA)
JUDGE

18.10.2023
Vivek

1. Whether speaking/reasoned? ***Yes**/No*
2. Whether reportable? *Yes/No*