

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

122

2023:PHHC:153701

CRM-M-60405-2023 (O&M)

Date of decision: December 1st, 2023

Pala Khan

.....Petitioner

Versus

Arshad Ali

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gulrej Khan, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

Petitioner is seeking quashing of summoning order dated 25.07.2023 (Annexure P-1) along with complaint case No.COMA/1799/2023 (now NACT/3060/2023) dated 09.06.2023 (Annexure P-2) under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act') read with Section 420 of IPC pending before Judicial Magistrate 1st Class, Bathinda and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner, *inter alia*, contends that the essential ingredients necessary to attract the mischief of an offence under Section 138 of the N.I. Act are conspicuously absent in the instant case. He submits that this assertion finds support from the fact that the cheque in question had been returned solely with the remarks "advice not received". While drawing the attention of this Court to Annexure P-9, learned counsel has further submitted that even the bank had acknowledged that these remarks did not fall under the category of "insufficiency of funds". Consequently, there was no basis for the respondent-complainant to have initiated prosecution against the

petitioner under Section 138 of the N.I. Act. It has been further argued by the learned counsel for the petitioner that although the cheque in question bears the signatures of the petitioner, however, it had not been issued by him. Learned counsel, in support, has drawn the attention of this Court to an application dated 05.04.2022 made to the police annexed as Annexure P-6. It has been submitted that this application made to the police underscores that the petitioner had lost several cheques, which had been duly reported to the police. Hence, it was highly improbable that the petitioner could have issued the same lost cheque to the respondent-complainant, especially after having lodged a complaint with the police on 05.04.2022.

3. Learned counsel for the petitioner has still further contended that evidently, the respondent-complainant had misused the stolen cheques and thereafter, falsely fabricated a case against the petitioner. Learned counsel has asserted that since the petitioner's cheque had been stolen, it could be safely inferred that subsequently it had been misused by the respondent-complainant and furthermore, the cheque had thus not been issued by the petitioner in the discharge of any legally enforceable debt or liability. Additionally, it had been argued by the learned counsel that it is a matter of record that the petitioner and the respondent-complainant were engaged in a number of criminal disputes and the respondent-complainant, in the above background, filed the instant complaint with a malicious intent to harass him.

4. I have heard learned counsel for the petitioner and perused the relevant material on record.

5. The learned counsel for the petitioner has raised disputed

questions of fact, which are beyond the purview of this Court's inherent jurisdiction under Section 482 of the Cr.P.C. Whether or not the disputed cheque was issued in discharge of any legally enforceable liability or debt or still further, whether there had been any misuse of a lost cheque by the respondent-complainant, are all issues which would be put to test during trial after the parties have led their respective evidence. Consequently, this Court would not be inclined to delve into the veracity or falsehood of the allegations levelled by the respondent-complainant at this stage.

6. As a sequel to the above, the instant petition being devoid of any merit, stands dismissed.

7. 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.

December 1st, 2023*Puneet***(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No