

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4502-2024 (O&M)

Decided on 03.04.2024

Gurdas Singh

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Lupil Gupta, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

(1). The petitioner has filed the present petition under Section 482 CrPC seeking quashing of the criminal complaint bearing NACT No.442 of 2021 under Section 138 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) (Annexure P1); summoning order dated 15.12.2021 (Annexure P2) passed by CJM, Mansa as well as subsequent proceedings arising therefrom.

(2). Learned counsel for the petitioner submits that a complaint was filed by Shiv Kumar – complainant under Section 138 of NI Act wherein it has been alleged that in order to discharge his liability, the petitioner-accused issued cheque No.000024 dated 19.08.2020, for a sum of Rs.5,07,375/- drawn on HDFC Bank Limited, Branch Mansa in favour of the complainant, however, the said cheque was dishonoured being “Funds Insufficient” and since no payment was made by the petitioner-accused even after statutory legal notice dated 03.10.2020, the present complaint has been filed against the petitioner.

(3). It is averred that on earlier occasion, the complainant had filed complaint, however, the trial court dismissed the same vide order dated

02.11.2021 being premature with liberty to file afresh within 30 days from passing of order and thereafter, another complaint was filed, which is subject matter of challenge in these proceedings.

(4). It is contended that the respondent-complainant has filed the impugned complaint on the basis of forged and fabricated cheque in question and the summoning order has been passed by the trial court without due application of judicial mind and thus non-speaking inasmuch as the trial court has completely ignored the fact that the cheque in question was given as security to the complainant. He further argued that as per Section 138 of NI Act, only in case a cheque issued by the drawer towards discharge of its legal liability is dishonoured for want of sufficient funds, then penal provisions can be attracted. Reliance has been placed on **KR Indira vs. Dr. G Adinarayana, 2004 (1) RCJ 472 SC.**

(5). On a query put to by this Court as to whether or not the petitioner disputes the signature of the cheque, in all fairness, learned counsel for the petitioner answered that the signatures of the petitioner on the cheque is not disputed, however, the cheque has been misused as the same was issued solely for the purpose of security and not for returning the amount in question. He further exhorted that had the cheque been issued towards returning of the amount, the petitioner would have written the loan amount by himself and in that case, there was no occasion for the petitioner to give the blank cheque.

(6). Having heard learned counsel for the petitioner and also taking into consideration the fact that the trial court has found, from the evidence led by the complainant in the preliminary evidence, there are sufficient grounds

to proceed against the petitioner for committing the offence under section 138 of NI Act and also since disputed questions of fact are involved in the present case which cannot be adjudicated under the present proceedings under Section 482 CrPC as the same needs to be examined very cautiously and sparingly as has been held by the Supreme Court in a catena of judgments, especially in the light of the fact that the cheque in question which has been duly signed by the petitioner needs to be put to trial for establishing the evidence that any offence has been committed under the NI Act, this Court does not find any valid reason to interfere in the trial proceedings.

(7). Dismissed.

31.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No