IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: November 21, 2023
Date of Decision: January 05, 2024

1.   CRM-M-21966-2012 (O&M)

Ramjeet Singh   …Petitioner

Versus

State of Haryana and another   …Respondents

2.   CRM-A-298-MA-2013

Ramjit Singh   …Appellant

Versus

Dr. Vini Rastogi   …Respondent

3.   CRM-A-303-MA-2013

Ramjit   …Appellant

Versus

Dr. Vini Rastogi   …Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Randhir Singh Hooda, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

Mr. Lalit Kumar Gupta, Advocate for the respondent.

DEEPAK GUPTA, J.

This order shall dispose of three cases as referred above, as all of them have arisen out of the common facts between the same parties.

2.1 Petitioner-Ramjit Singh filed two complaints bearing No.3363 of 2011 and 3364 of 2011, seeking prosecution of accused Dr. Vini Rastogi (respondent herein) under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the N.I. Act'). Both these complaints were dismissed vide separate judgments both dated 04.04.2013 (Annexure R-4) passed by learned Judicial Magistrate 1st Class, Gurgaon.

2.2 CRM-A-303-MA-2013 is directed against acquittal of the accused-respondent as recorded in criminal complaint No.3363 of 2011; whereas CRM-A-298-MA-2013 has been filed against acquittal recorded in criminal complaint No.3364 of 2011.

2.3 Accused *(in the two complaint cases as above)* Dr. Vini Rastogi, on the other hand, had lodged FIR No.400 dated 06.08.2011, to prosecute the petitioner *(i.e., complainant in the complaint cases)* under Sections 380, 465, 467, 471 and 420 IPC for stealing the cheques and committing the offence of cheating and forgery. By way of CRM-M-21966-2012 (O&M), petitioner Ramjit has sought quashing of the said FIR.

3. Taking the facts from the two criminal complaints, it emerges that it was pleaded by complainant, i.e., petitioner that accused had borrowed the amount of ₹20 lacs (₹10 lacs each pleaded in two complaints) from him on 06.10.2010 as a friendly loan. Towards discharge of the said liability, accused had issued following cheques in

favour the complainant:

1. Cheque No.090152 dated 20.10.2010 for ₹10 lacs
2. Cheque No.000509 dated 16.11.2010 for ₹ 10 lacs

4.1 Criminal complaint No.3363 of 2011 was filed regarding dishonour of cheque No.090152 dated 20.10.2010, pleading that on presentation, the said cheque was dishonoured vide return memo dated 07.12.2010 with remarks 'payment stopped by drawer'. Complainant dispatched legal notice dated 09.12.2010 through registered post to the accused demanding payment of cheque amount within 15 days from the receipt of the said notice, but accused did not pay the amount and so, the complaint was filed on 12.03.2011.

4.2 Criminal complaint No.3364 of 2011 was filed in respect of cheque No.000509 dated 16.11.2010 submitting that on presentation of the said cheque, it was dishonoured due to 'payment stopped by drawer' vide bank memo dated 01.12.2010. Complainant dispatched legal notice dated 09.12.2010 demanding the payment of cheque amount within 15 days from the date of receipt of the said notice, but the accused did not pay any heed and so, the complaint was filed on 12.03.2011.

5. In both the cases, summoning orders were passed on 12.03.2011 after recording preliminary evidence. Notice of accusation was served upon the accused and she pleaded not guilty and claimed trial. Complainant adduced in his evidence as many as 05 witnesses. The accused in her statement recorded under Section 313 Cr.P.C.,

controverted the incriminating material appearing in the evidence and pleaded that she had not obtained any loan from the complainant.

6.1 In criminal complaint No.3363 of 2011 regarding dishonour of cheque No.090152 dated 20.10.2010, it was pleaded by the accused in her statement under Section 313 Cr.P.C that cheque in question had been given by her as a blank signed cheque to the complainant for purchasing a shop. As the deal could not be materialized, the complainant misused the cheque.

6.2 In criminal complaint No.3364 of 2011 in respect of cheque No.000509 dated 16.11.2010, it was pleaded by the accused in her statement under Section 313 Cr.P.C. that the cheque in question along with another blank cheque signed by her were kept in her office and the same were misplaced. She also pleaded that she had not given any affidavit (referred by the complainant) or the cheque in question to the complainant.

6.3 Accused also led evidence in defence. After hearing both the sides and appraising the entire material on record, learned Judicial Magistrate 1st Class, Gurgaon dismissed both the complaints, acquitting the accused.

6.4 While recording the acquittal, it is noticed by learned Trial Court that though complainant had pleaded to have given a friendly loan to the accused on 06.10.2010, but in his testimony before the Trial Court, he made a contradictory statement to the effect that loan had been advanced on 20.12.2010. Even in the affidavit Ex.PW5/A relied upon by the complainant, it was projected that loan was taken by the accused on 06.10.2010 and this major contradiction could not be explained by the complainant. Still further, it was disclosed by the complainant in his testimony that he had arranged funds for lending the amount to the accused by selling his shop and some of the land, but when he was asked to produce the copy of sale deed, he produced a document Mark 'A', which revealed that in fact he had purchased a shop on 16.04.2009 and had not sold the same and thus, his stand to the effect that he had arranged the funds by selling a shop, was not at all proved. Apart from this, complainant had relied upon an affidavit Ex.PW5/A projecting that the same was executed by the accused while borrowing the amount. To prove the affidavit, the complainant had examined Shri Suman, the Notary of District Courts, Gurgaon, but it was found that though he used to maintain a register and used to enter the document number on the affidavit, but on Ex.PW5/A, no such entry of the register was mentioned. PW5 could not even produce the register regarding attestation of the documents as maintained by him on the plea that the same has been misplaced and that regarding the same, he had lodged a DDR, but could not tell the date of missing of the register. The testimony of this PW5 was further disbelieved after noticing that he had notarized a blank document Ex.D1 (as produced by the accused) by putting his stamp and signature thereon along with date, but it was blank, as far as its contents are concerned and thus, the defence pleaded by the accused is quite probable that Ex.PW5/A had been managed by the complainant from the Notary on the stolen document. After recording all these observations, the two complaints were dismissed and acquittal was recorded.

7. Challenging the aforesaid acquittal, it is contended on behalf of the petitioner-complainant that accused had not denied her signatures on the cheques in question and so there was presumption of legal liability in favour of the complainant as per Section 139 of the N.I. Act and that accused had failed to rebut this presumption. It is further contended that defence pleaded by the accused in her statement under Section 313 Cr.P.C. is contrary to the stand taken in the FIR lodged at the instance of accused Dr. Vini Rastogi and that Court had ignored the said fact. Prayer is accordingly made to set aside the acquittal of the respondent in the two cases and to record her conviction.

8. Needless to say that respondent, when put on notice, opposed both the applications for leave to appeal, defended the impugned judgments of acquittal as recorded by trial court and prayed for dismissal of the applications.

9. Submissions of both sides considered. Record appraised.

10.1 Since, it is the stand of the petitioner that respondent-accused pleaded two contradictory stands in her statement under Section 313 Cr.P.C. in the two complaints; and in the FIR lodged at her instance, so it is necessary to have a look at the allegations made in the FIR.

10.2 The FIR in *question [Annexure P-9 in CRM-M-21966 of 2012 (O&M)]* was lodged by respondent-Dr. Vini Rastogi by stating therein that she was posted as a Medical Officer in General Hospital, Gurgaon since 28.01.2011. Prior thereto, she was posted as Medical Officer at Sohna on deputation. During her posting at Gurgaon, she was doing her duty in Nursery Unit, sitting in her room, where she had kept a diary lying on the table, in which she had kept two blank cheques bearing No.000507 and 000509 signed by her, of Union Bank, Sector 56, Sushant Lok, besides few blank stamp papers and some signed blank plain papers, as these documents were required by her husband Dr. Ajay Bhargav, working in Faridabad and who required the said documents for obtaining loan from bank, as the documents were required by the bank and EMI and other file charges were supposed to be filed by her husband. It was further alleged that on 16/17.11.2010 after finishing her work, she found the diary, but the documents were missing. She enquired from her husband, when he visited Gurgaon on 18.11.2010 and he had told that he had not taken any such document. She (Dr Vini Rastogi) then immediately approached the bank on 19.11.2010 to stop the payment of both the cheques, so as to prevent any financial loss. As at that time, she did not have suspicion on any person, she did not lodge the FIR. However, on receiving summons from the Court of learned Judicial Magistrate 1st Class, Gurugram, it was revealed that cheque No.000509 had been used by Ramjit Singh S/o Rattan Singh, who had filled in the blank cheque with the amount of ₹ 10 lacs. She (Dr. Vini Rastogi) then recalled that this person frequently used to visit her at Sohna Civil Hospital along with his parents by claiming himself to be Local Congress Leader. She also remembered that she had given him a blank cheque of Syndicate Bank, Sohna bearing No.090152 in his name for buying one shop in Sohna. Though the deal was cancelled, but said Ramjit did not return the documents and so, she had stopped payment of the cheque. It was alleged that as said Ramjit Singh asked her to do some undesirable job in medico legal work and postmortem to which she refused, so in order to take revenge, said Ramjit Singh committed theft of the documents and presented the two cheques for filing the criminal complaints.

11. By pointing towards the contents of the FIR and the defence, which as taken by the respondent Dr. Vini Rastogi in the two complaint cases, it is urged by learned counsel for the respondent that the defence taken by her is not at all contradictory to the stand taken in the FIR, inasmuch as one of the cheque i.e. 090152 dated 20.10.2010 had earlier been given to the complainant in his name for purchasing a shop, but as the deal was cancelled and complainant had not returned the cheque, so the accused got the payment stopped. As far as cheque No.000509 dated 16.11.2010 is concerned, it was a blank signed cheque lying in the diary of the accused, which along with some other documents were stolen by the accused. Respondent Dr. Vini Rastogi also justified as to for what

purpose she had kept the blank signed cheques and documents in her diary as the same were required by her husband for obtaining loan from the bank.

12. After carefully considering the submissions of both the sides, I find all the three petitions to be devoid of any merit.

13. Affidavit Ex.D1 referred by the respondent-accused clearly reveals that though it is a document duly signed and stamped by the Notary, but it is a blank document, with no entry in the relevant register made by PW5 Suman, the Notary Public. In the face of this document produced in defence, learned Trial Court did not commit any error in coming to the conclusion that affidavit Ex.PW5/A relied by the complainant-petitioner, projecting that accused had executed the same for borrowing the loan of ₹ 20 lacs, is absolutely not believable, particularly considering the fact that contradictory stand is taken by the complainant regarding the date, when the amount was lent by him and also regarding the sources from which he had arranged the funds. Learned Trial Court has given quite cogent reasons while recording the acquittal.

14. No doubt that there is presumption of legally enforceable debt and liability under Section 139 of the N.I. Act in favour of the complainant, once the signatures on the cheque are admitted, but the said presumption is rebuttable. Accused is not required to rebut the said presumption on the standard of ‘beyond reasonable doubts’. Rather, he is required to only probablize the defence taken by him in order to rebut the

presumption. The presumption can be rebutted by the accused not only by eliciting favourable material from the evidence of the complainant, but also by taking stand in statement under Section 313 Cr.P.C. and by producing the defence evidence to support that stand. In this case, accused quite successfully not only elicited the material from the complainant's evidence to discredit him, but also proved the defence evidence, probablizing his defence.

15. Not only above facts and circumstances, but this Court also notices that two complaints in question should have been dismissed at the initial stage itself, as both of them were barred by time. Section 138 to be read with Section 142 of the N.I. Act, would reveal that following ingredients are required to be proved to make out an offence: -

> *(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
>
> *(ii) that 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;*
>
> *(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the 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 the bank;*
>
> *(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the*

cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

16. It is the failure of the accused to make payment of the cheque amount within 15 days from the date of receipt of legal notice that cause of action arises in favour of the complainant. The cause of action arises from the very first day, when the period of 15 days expired from the receipt of the legal notice and accused failed to make the payment. Then, as per Section 142 of the N.I. Act, complaint is required to be made within a period of 30 days from the date on which cause of action had arisen.

17. In the present case, as the record would reveal that after receiving intimation regarding dishonour of the two cheques on the ground of stop payment, the petitioner issued legal notices on 09.12.2010 in both the cases through registered post. Although, it is not in evidence as to when the legal notices were received by the accused, but keeping in view the provisions of General Clause Act, it can be assumed that accused received the same at the most within 07 days, i.e., up to 16.12.2010. The payment was then required to be made within next 15 days, i.e., up to 31.12.2010. As payment was not made, the complaints could have been filed within next 30 days, i.e., up to 30.01.2011.

18. However, in both the cases, the complaints have been filed on 11.03.2011, i.e., beyond the period of limitation. Although proviso to Section 142 (b) of the N.I. Act provides that cognizance of the complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making the complaint within such period, but in the present case, record does not reveal that any such request had ever been made by the complainant-petitioner to condone the delay in filing the delayed complaints.

19. For all the reasons as above, there is no justification to set aside the impugned judgments recording acquittal of the respondent, as passed by the Trial Court in the two complaint cases, as the same are found to be well reasoned and based on proper appreciation of evidence on record.

20. As far as CRM-M-21966-2012 (O&M) for quashing of FIR is concerned, certain guidelines have been laid by the Hon'ble Supreme Court as to when an FIR can be quashed under inherent powers of this Court under Section 482 Cr.P.C., as laid down in ***State of Haryana vs Ch. Bhajan Lal, 1992 AIR 604 = 1990 SCR Supl. (3) 259,*** in which it was held as under;

> *"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- ï7 myriad kinds of cases wherein such power should be exercised:*

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

21. In the present case, learned counsel for the petitioner could not convince this Court that case of the petitioner falls in any of the aforesaid parameters. The allegations made in the FIR require to be

investigated. As such, this Court finds no ground, so as to quash the FIR in question.

Consequently, all the three cases stand dismissed.

Photocopy of this order be placed on the connected case files.

January 05, 2023 **(DEEPAK GUPTA)**
Sarita **JUDGE**

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