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

**CRM-M-51289-2018**
**Reserved on September 06, 2024**
**Pronounced on: September 13, 2024**

Avtar Singh ......Petitioner

Versus

Ranjit Singh ......Respondent

**CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ**

Present: Mr.Yashdev Kaushik, Advocate
for the petitioner.

Mr.H.S.Randhawa, Advocate
for the respondent as Amicus Curiae.

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**RAJESH BHARDWAJ, J.**

1. Present petition has been filed praying for quashing of complaint No.703 of 2018, dated 07.09.2018, under Section 138 of Negotiable Instrument Act, 1881 (for brevity,`the 1881 Act'), Annexure P-3, and summoning order, dated 24.09.2018, Annexure P-4, vide which the petitioner had been summoned to face trial for offence under Section 138 of the 1881 Act and subsequent proceedings arising therefrom qua the petitioner.

2. Succinctly the facts of the case are that the petitioner has been prosecuted on the basis of the complaint filed by the respondent/complainant under Section 138 of the 1881 Act. It was contended by the

respondent/complainant in the complaint that he was interested in getting the government job in PGI and for the said purpose, Inderjit Singh son of Gurmeet Singh, who was his relative, introduced him to the petitioner and he assured him to provide a government job within two months on paying an amount of Rs.2,00,000/-. On being assured by Inderjit Singh, the respondent/complainant, in the month of February 2018, advanced an amount of Rs.2,00,000/- to the petitioner. However, the respondent/complainant found himself to be deceived by the petitioner as neither he was provided the government job nor the amount paid by him was returned to him. He made requests to the petitioner to refund his amount and hence, the petitioner issued a cheque bearing No.126335, dated 06.06.2018 for a sum of Rs.2,00,000/- drawn on State Bank of India, Branch Sector 12, PGI, Chandigarh, from the account bearing No.10413628035. The respondent presented the cheque for getting it encashed, however, the said cheque was dishonored with the remarks `payment stopped by drawer'. On assurance of the petitioner, the said cheque was lastly presented on 28.06.2018 for encashment, however, it also met the same fate and returned on 29.06.2018 with the same remarks, i.e. `payment stopped by drawer'. The respondent/complainant repeatedly tried to contact the petitioner, however, he deliberately avoided the same. The respondent served the petitioner with a legal notice through his counsel, dated 27.07.2018 demanding the cheque amount, however, the petitioner gave a vague reply to the said legal notice. Aggrieved with the same, the respondent/complainant filed the complaint on the allegation that intention of the petitioner was *mala fide* since beginning and he was fully aware of the fact that the cheque issued by him in discharge of his legal liability towards the complainant would be dishonored as he had stopped the payment of the same. On presentation of the complaint, the learned trial Court, finding a *prima facie* case, summoned the petitioner vide impugned summoning order, dated 24.09.2018. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently argued that it was the specific case of the respondent that he was interested in getting a government job for which he allegedly made a payment of Rs.2,00,000/- to the petitioner for providing him a government job. He has submitted that there are no allegations, whatsoever, made by the respondent/complainant that the petitioner had taken any loan for which any legally enforceable liability arises for the petitioner to discharge towards the respondent. He submits that specific case of the complainant is that he paid the alleged amount for the purpose of securing a government job without examining whether the petitioner had any authority to provide the job or not. Thus, on the face of it, the respondent had entered into a void contract with the petitioner and paid the money as against the public policy for illegal purpose. He submits that as per the statutory provisions of Section 23 of the Indian Contract Act 1872 (for brevity, `the 1872 Act'), if a contract is void, consideration is for immoral and for illegal purpose, then the whole transaction becomes void. The consideration paid in such a contract becomes an illegal consideration and by no stretch of imagination, the same is a recoverable debt. He has submitted that in catena of judgments, the various High Courts have held that under Section 139 of the 1881 Act, there

lies a presumption under the law, however, this presumption exists for the legally recoverable debt but from the facts and circumstances of this case, the consideration amount is illegal and hence no presumption under Section 139 of the 1881 Act lies against the petitioner. He has submitted that the respondent himself had not pleaded the existence of legally recoverable debt and hence, no presumption in favour of the respondent lies. Hence, the Court could not have taken the cognizance in such a case. He has submitted that applying the law settled in catena of judgments, the impugned complaint and the summoning order, being unsustainable in the eyes of law, deserve to be quashed.

4. On filing of the petition, this Court issued notice to the respondent/complainant on 21.11.2018 and further proceedings before the trial Court were stayed. Service was effected on the respondent but despite that he did not appear before the Court. Various notices were issued to him and when he did not appear, notice was issued to him through SHO concerned as well. However, the respondent/complainant failed to appear before the Court and thus, vide order dated 13.05.2024, this Court appointed Mr.Harkirat Singh Randhawa, Advocate, as Amicus Curiae on behalf of the respondent to assist the Court. Mr.Harkirat Singh Randhawa, Advocate, has appeared and has fairly submitted that the specific stand taken by the respondent/complainant is regarding paying the amount of Rs.2,00,000/- to the petitioner for providing him a government job, which is an illegal gratification. He has relied upon the various judgments passed by various High Courts, in **R.Parimala Bai W/o B.S.Krishnan vs Bhaskar Narasimhaiah s/o late R.Sampath** Law Finder Doc Id # 1122350, **B.Babu**

**Rao vs Kishore Naidu Durga Manik and other** Law Finder Doc Id # 2007177, **Shri Pradeep vs Vyankanna and others** Law Finder Doc Id # 2311345, and **Jeyaramachandran vs Babu @ A.M.Iqbal** Law Finder Doc Id # 1752000 and thus submits that viewing the facts and circumstances of the present case the agreement between the petitioner and the respondent is void and hence the presumption that the complaint filed under Section 138 of the 1881 Act is for an amount which cannot be held to be a legally enforceable debt. He has thus fairly submitted that prosecution of the petitioner, on the basis of the impugned complaint and the summoning order, is nothing but an abuse of the process of the Court.

5. Heard.

6. On hearing the learned counsel for the parties and perusing the record, it is apparent from the bare reading of the impugned complaint that the respondent/complainant had filed the complaint for prosecuting the petitioner as the cheque issued by him for an amount of Rs.2,00,000/- was dishonored on its presentation with the remark `payment stopped by the drawer'. This was the specific stand taken by the respondent that the amount was paid by him for securing a government job through illegal means. After dishonoring of the cheque, legal notice was also issued by the respondent wherein again the stand taken in the complaint was reiterated. The judgments relied upon by learned Amicus Curiae are squarely applicable in the facts and circumstances of the present case. Provisions of Sections 23 and 2(g) of the 1872 Act are relevant, which read as under:-

> "Section 23. **What consideration and objects are lawful, and what not.-** The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or
is of such a nature that, if permitted, it would defeat the provisions of any law; or is faudulent; or
involves or implies, injury to the person or property of another; or
the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

As per Section 2(g) of the Indian Contract Act, an agreement not enforceable by law is said to be void."

7. Sections 138 and 139 of the 1881 Act read as under:

"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 [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, [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 section138 for the discharge, in whole or in part, of any debt or other liability."

8. In **Jeyaramachandran**'s case (supra), it has been held as under:-

"18. Accordingly, as held by the Delhi High Court, in the abovesaid decision, the case of the appellant would not fall in any of the abovesaid three classes of cases inasmuch as securing of job at abroad is not an unlawful object. Though securing a job at abroad may not be an unlawful object but what is unlawful is the consideration paid to it and the consideration having been already paid by the appellant, the illegality stood completed on the part of the appellant and inasmuch as the appellant would have to rely upon the illegality to make out his claim or enforce the same, this case does not fall within the three class of cases mentioned above and as regards the second class of cases above referred to, in that backdrop, the Supreme Court in the decision reported in AIR 1968 SC 534 (Sita Ram vs Radha Bai) had held that it is settled law that where the parties are not in *pari delicto*, the less guilty party may be able to recover the money paid or property transferred, under the contract. It was further held that such possibility could arise in the three situations:

'1. The contract may be of kind which has been made illegal by statute in the interest of a particular class of persons of whom the plaintiff is one;

2. The plaintiff must have been induced to enter into the contract by fraud by strong pressure;

3. The defendant is under a fiduciary duty to the plaintiff and it is in connection with this fiduciary relationship that moneys have come into his hands as proceeds of a transaction albeit

illegal'. None of the abovesaid three situations arise in the present case.

19. The doctrine or rule of in *pari delicto* is the embodiment of the principle that the Courts refuses to enforce the illegal agreement at the instance of the person who is a party to the illegality or fraud. As above pointed out, the three exceptional conditions to which the abovesaid maxim does not apply, not applying to the facts and circumstances of the present case, resultantly, as held by the Delhi High Court, in the abovesaid decision, considering the facts and circumstances of the present case, there did not exist any legally enforceable debt or liability for the discharge of which the cheques in question could be held to have been issued, in such view of the matter, Section 138 of the Negotiable Instruments Act would not be attracted and the abvoesaid aspects of the matter having also been taken into consideration by the Appellate Court and *inter alia* rightly chosen to acquit the respondent of the offence put forth against him."

9. In **R.Parimala Bai**'s case (supra) it has been held as under:

"24. So far as Section 139 of the Negotiable Instruments Act is concerned, of course there is a presumption under law. Initially the court has to draw presumption in favour of the complainant if on plain reading of the complaint, the court is of the opinion that the complainant has pleaded that there existed a legally recoverable debt and in support of that contention. The presumption has to be raised in favour of the complainant regarding existence of legally recoverable debt. But, if an illegal consideration is relied upon by the complainant himself, then such presumption u/s.139 of the Negotiable Instruments Act, cannot be raised at the initial stages also. It all depends upon the facts and circumstances of each case on the basis of the pleadings of the parties.

25. Section 138 of the Negotiable Instruments Act mandates that, there should be an existence of legally recoverable debt and in order to attract Section 138 of the Negotiable Instruments Act, the party has to plead with regard to the existence of legally recoverable debt. If he pleads with regard to the existence of the legally recoverable debt u/s.138 of the Act, then only presumption u/s. 139 of the Act can be raised in favour of the complainant. If the complainant himself does not plead the existence of legally recoverable debt, then there is no question of raising any initial presumption in favour of the complainant. Therefore, even considering the provisions of Section 139 of the Negotiable Instruments Act, there is no question of accused rebutting the presumption unless the presumption is raised in favour of the complainant. If the court for any reason comes to the conclusion that the ingredients of Section 138 of the Negotiable Instruments Act, are not made out, the court cannot take cognizance of such matter, and for the purpose of calling the accused to appear before the court and contest the proceedings."

10. Thus, it is evident that the respondent had filed the complaint on the allegation that the cheque given by the petitioner was dishonored on its presentation. This is the settled position of law that once issuance of cheque has been admitted by the accused then there lies a presumption under Section 139 of the 1881 Act unless contrary is proved that the holder of a cheque received the cheque of the nature referred to in Section 138 of the 1881 Act for discharge, in whole or in part, of any debt or any other liability. However, if the contract entered into between the parties in itself is void, then presumption for discharge of a legally enforeacble liability does not arises. Hence, the impugned complaint and the summoning order fails on the touch stone of the law settled. Thus, this Court has no hesitation in

holding that prosecution of the petitioner on the basis of the complaint is nothing but an abuse of the process of the Court.

11. Resultantly, the present petition is allowed. Impugned complaint and the summoning order are hereby quashed.

12. The Court appreciates the assistance provided by the Amicus Curiae to the Court.

**September 13, 2024** **( RAJESH BHARDWAJ )**
meenuss **JUDGE**

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