

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114 (I) CRM-M-29303-2022 (O&M)
Date of Decision : March 12, 2024

RESHAM HIRU CHELLARAM -PETITIONER

V/S

STATE OF PUNJAB AND ORS -RESPONDENTS

(II) CRM-M-29435-2022

RESHAM HIRU CHELLARAM -PETITIONER

V/S

STATE OF PUNJAB AND ORS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Aayush Gupta, Advocate
for the petitioner (in both petitions).

Mr. Pardeep Bajaj, D.A.G., Punjab.

Mr. Atul Goyal, Advocate
for the respondents No.2 and 3.

KULDEEP TIWARI, J. (ORAL)

1. The amenability of both these petitions, for being decided through a common verdict, emanates from them containing identical questions of law, besides emanates from common relief(s) being craved to be reaped therein. For brevity, the facts are being extracted from CRM-M-29303-2022.

2. The petitioner seeks quashing of complaint bearing No.COMA/1256/2020, titled as “M/s Adinath Knit and another V/s M/s Prosperity Apparel Group and another”, and, quashing of summoning order dated 07.05.2021, whereby, she has been summoned to face trial under Section

138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act').

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner has, in his yearning for the relief (supra), argued that, on the date of issuance of the disputed cheque(s), the petitioner was neither a proprietor, nor a partner, nor an authorized signatory of M/s Prosperity Apparel Group Inc. (hereinafter referred to as the 'accused firm'), which has been arrayed as accused No.1 in the complaint (supra). To substantiate this argument, he has argued that, though the petitioner was earlier associated with the accused firm as a Director, however, she had resigned therefrom on 03.02.2017 and his resignation was duly accepted by the Board of Directors on the same day itself. Consequently, he has argued that since the petitioner has not signed the disputed cheque(s), therefore, the complaint (supra) is not maintainable against her.

4. To lend vigor to his above made arguments, he has drawn attention of this Court towards the order dated 13.02.2024, as rendered by this Court upon CRM-M-33437-2018, whereby, in the similar facts and circumstances, as involved herein, this Court has set aside the impugned summoning order and quashed the impugned complaint.

5. Lastly, the learned counsel for the petitioner has disputed the existence of petitioner's signatures on the disputed cheque(s). In this regard, he has drawn attention of this Court towards Annexure P-3, wherein becomes enclosed the disputed cheque(s), and, has argued that the disputed cheque(s) does not bear the signatures of the petitioner, rather the signatures

as appended thereon are identical to the signatures, which occur on the Resolution of the Board of Directors and in fact, are of one Vijay Varand Golani.

FACTUAL MATRIX

6. Before embarking upon the process of evaluating the arguments addressed by the learned counsel for the petitioner and thereupon penning down the consequent opinion, it is deemed imperative to first deal with the allegations, as levelled in the complaint (supra).

7. What drove the complainant to the institute the complaint (supra), was the dishonour of the disputed cheque(s), which was allegedly presented by the petitioner, on behalf of the accused firm, to discharge its legal liability. The relevant extract of the complaint is reproduced hereinafter:-

“2. That the accused no.1 is a Partnership/Proprietorship concern. The accused no.2 being Partner/Proprietor/authorized signatory of accused no. 1 is looking after day to day business of the firm and is responsible for the acts, omissions and commissions done by each other. The accused have business dealing with the complainant. The accused approached complainant and requested for purchase of Readymade Garments on credit. The accused induced the complainant that the accused will make the payment of the purchased goods after getting the delivery. On the misrepresentation and inducement of the accused, the complainant agreed to deliver the goods as per her order. The accused purchased readymade garments on credit through invoice number 380 dated 17/12/2018 for 28,910.52 US Dollar (Indian currency Rs. 20,52,646.92/-). The copy of invoice, packing list, bill of Lading and Bill of exchange is attached here with.

3. That after getting the delivery the accused did not make any payment as promised by them. Whenever complainant reminded the accused to make the payment of the goods purchased by them, the

accused promised the complainant that her intention are very clear and further promised to make the payment as early as possible. Ultimately in order to discharge the above said legal liability, the accused for and on behalf of the firm issued two cheque bearing no. 001182 dated 09/30/2019 (30/09/2019) and cheque no. 001183 dated 10/30/2019 (30/10/2019) for 9636.84 US Dollar each (Indian currency Rs.6,84,215.64/- each) as 2/3rd part payment and 3/3rd full and final payment respectively drawn on Bank of America, NA, 222 Broadway, New York, NY-10038, U.S.A., with the assurance that the said cheques will be encashed on its presentation.

4. That the complainant maintains his account in Canara Bank, SME Branch, Cheema Chowk, Ludhiana. Believing the assurances of the accused to be true complainant deposited the said cheques bearing no. 001182 dated 09/30/2019 (30/09/2019) and cheque no. 001183 dated 10/30/2019 (30/10/2019) for 9636.84 US Dollar each (Indian currency Rs.6,84,215.64/- each), in his bank account for its encashment at Ludhiana. The banker of complainant sent the said cheques for their encashment to the bank of the accused, but banker of accused has dishonored and returned the said cheques to the banker of complainant with the memo dated 13/12/2019 with the remarks "Payment stopped" meaning thereby that the accused have no sufficient funds in their account to encash the said cheque. At the time of presentation of the cheques there was no sufficient fund in the account of the accused to encash the said cheques. The banker of the complainant returned said cheques in original along with memo and gave information regarding dishonoring of the above said cheques to the complainant."

8. On the allegations extracted hereinabove, the learned Magistrate concerned has, vide the impugned summoning order dated 07.05.2021, summoned the petitioner to face trial under Section 138 of the N.I. Act.

REASONS FOR DISMISSING THE PETITION

9. This Court has heard the arguments advanced by the learned

counsel for the petitioner, however, since disputed questions of facts are involved in the instant case, this Court refrains from interfering in the matter, for the reasons assigned hereinafter.

10. First of all, “*whether the petitioner had, prior to issuance of the disputed cheque(s), actually resigned from the Directorship of the accused firm or not, and, whether his resignation was duly accepted or not by the Board of Directors of the accused firm*” are not *per se* admissible facts and documents, which are in fact required to be proved by the petitioner, by adducing cogent evidence before the learned trial Court, at an appropriate stage.

11. Secondly, “*whether the disputed cheque(s) bears the genuine signatures of the petitioner or not*” is also a disputed question of fact, especially when the complainant has, in its reply, not admitted that the petitioner’s signatures are forged, and as such, at this premature stage and in the absence of any cogent evidence becoming adduced before the learned trial Court, no opinion can be formed by this Court, in the above regard.

12. Now, insofar as the reliance placed by the learned counsel for the petitioner, upon the order dated 13.02.2024, rendered by this Court upon CRM-M-33437-2018, is concerned, the same is a misplaced reliance, inasmuch as, the petitioner therein was held to be not the proprietor of the accused proprietorship firm. This Court had rendered the order (*supra*), thereby quashing the complaint and impugned summoning order therein, only upon there being no dispute *qua* facts.

FINAL ORDER

13. For the reasons assigned hereinabove, both the instant petitions are **dismissed**. However, liberty is reserved to the petitioner(s) to raise all

such pleas and claims, as raised herein before this Court, before the learned trial Court concerned, at an appropriate stage.

14. Pending application(s) stand disposed of accordingly.

March 12, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No