IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

141 **CRM-M-28123-2024**
RESERVED ON: 30.05.2024
PRONOUNCED ON:27.08.2024

KULDEEP SINGH

… PETITIONER

VERSUS

JASVIR SINGH

…..RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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Present: Mr. G.S. Punia, Sr. Advocate with
Mr. P.S. Punia, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J

1. Relief Sought:

The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked seeking quashing of complaint bearing No. CIS/NACT-29-2024, dated 31.01.2024 registered on 01.02.2024 (Annexure P-1), under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act, 1881') as well as summoning order dated 01.03.2024 (Annexure P-2) passed by Judicial Magistrate Ist Class, Kharar, SAS Nagar.

2. Facts

The brief facts of the present case is that the petitioner was having good relations with the complainant being his friend and was under the debt of some persons. He borrowed a sum of Rs.2,50,000/- from the complainant in August, 2021. To discharge his legally enforceable debt, he issued a cheque bearing No. 000028, dated 29.11.2023, amounting to Rs.2,50,000/- drawn on HDFC Bank in favour of complainant. On presentation thereof, the same was received back unpaid with the remarks "Drawer Signatures Differs/Funds Insufficient", vide memo dated 29.11.2023. Thereafter, the complainant issued a legal notice dated 13.12.2023 calling upon the petitioner to make the payment of said cheque within 15 days, on failure to do so, he filed a complaint under Section 138 of NI Act, 1881 against the petitioner.

3. Submissions
On behalf of petitioner:

It has been contended by learned Senior Counsel appearing for the petitioner that the present complaint is nothing but an abuse of process of law. In fact, it is a counterblast of the complaint under Section 138 of NI Act, 1881, already pending against the respondent wherein, respondent was summoned vide order dated 13.03.2022 and due to non-appearance of respondent, proceedings under Section 82 Cr.P.C. declaring him as proclaimed absconder has been initiated against him.

It has further contended that the complainant himself admitted that they are having friendly relations and the cheque in question was stolen by the respondent, as he used to come to the petitioner of and on. It is submitted that the respondent might forged the signature of the petitioner and for this reason only the bank has returned the cheque mentioning in the memo of return that the signatures on the cheque do not tally. The offence under Section 138 of NI Act, 1881 is not made out against the petitioner, as it is not proved that it is the petitioner who issued the cheque in question and bears his signatures.

4. Analysis

In the present case, there is no dispute between the complainant and accused with regard to their acquaintance. It is also not in dispute that, the cheque in question belongs to the account of the accused, but the accused has disputed his signatures. It is also not in dispute by the Accused that, the cheque in question presented for encashment and dishonoured for the reason of "Drawer's Signature Differs" and “Insufficient Funds” on 29.11.2023, since as matter on record, proved by return memo dated: 29.11.2023 issued by the concerned bank, therefore it is a matter on record and has been proved that, the cheque in question was presented within its validity period and dishonoured as per the bank endorsement issued by the banker of accused. It is also not in dispute that, after dishonour of the cheque in dispute and receipt of bank memo within 30 days from the date of receipt of bank memo, a legal notice was caused to the accused calling upon him to pay amount covered under the dishonoured cheque. Though, the Accused has also not disputed service of the legal notice upon him but no reply to the legal notice has been filed by the complainant. Hence, the complainant has complied the mandatory requirements as required U/s.138(a) to (c) of Negotiable Instruments Act, 1881.

It is the specific defence of the Accused that, he has not borrowed any amount from the complainant and has not issued the cheque in question towards discharge of arrears of amount of Rs.2,50,000/- as claimed by the complainant. It is also the defence of the accused that, the complainant has stolen blank unsigned cheque from him and has forged his signature on the cheque and presented the same to the bank and the cheque in question stands dishonoured for the reason of "Drawer's signature Differs". On the other hand, the complainant claimed that, the accused's wife has borrowed a loan amount of Rs.2,50,000/- from him in August 2021 and agreed to repay the said loan amount by August 2022 and also to present the cheque for encashment in case of non-return of borrowed money. On account of non-payment of loan amount, the said cheque was presented to the bank, which was dishonoured for reason of "Drawer's Signature Differ" and “Insufficient Funds”. Hence on this back ground the oral and documentary evidence of the Complainant and accused has to be examined.

It is a relevant here to refer the decision of Hon'ble Apex Court of India reported in 1999 (3) SCC 376 in the case of "L.C. Goyal Vs. Suresh Joshi (Mrs) and others"., wherein the Hon'ble Apex Court held that " Drawer denied his signature on the cheque and pleaded that, he could not be held responsible unless opinion of handwriting expert was obtained, but when cheque was bounced for want of fund, the plea of forged signature cannot be accepted". It is true that, the cheque in dispute has been dishonoured for the reason "Drawers signature differs" but it is not the defence of the Accused that, as on the date of presentation of the cheque he was having sufficient funds in the bank to honour the disputed cheque and the Accused has not produced any document to show that, as on the date of presentation of the cheque he was having sufficient balance amount in his bank account and if the cheque was presented and same will be honoured, in such circumstances, though the cheque in dispute dishonoured for the reason of "Drawer signature differs" it cannot be held that, the Accused was having sufficient funds in his account, as on the date of presentation of the cheque for encashment, therefore the defence taken by the Accused that, the complainant has misused the cheque by forging his signature cannot be acceptable one.

It is also relevant here to mention that, the petitioner-accused has specifically contended that, he has not issued any cheque to the complainant to clear the amount but the cheque in question was stolen by the respondent-complainant and the same has been presented to the bank for encashment by forging his signature. Hence on this ground only an adverse inference can be drawn against the petitioner-accused that, though the cheque in question was issued to the complainant but only for the purpose of evading his liability for discharging of the debt. It cannot be held that, complainant has forcibly taken the cheque in question from the possession of the accused and forged his signature and presented the said cheque to the bank for its encashment and therefore the cheque in question got dishonoured for the reason of "Drawer's signature differs" and “Insufficient funds”. It is also relevant here to mention that the petitioner-accused has not opted to file reply to the legal notice issued to him.

It is relevant here to mention that, as it is already held in the above that, the complainant proved that the cheque in question belongs to the petitioner-accused and the cheque in question was presented within its validity period and the same was dishonoured for the reason of "Drawers Signature Differs" and “Insufficient Funds” and thereafter the legal notice caused by him through registered post to the petitioner-accused. Though the said notice was served on him but no reply has been filed to the said notice, in such circumstances, it can be held that, the complainant has discharged her initial burden by complying the mandatory requirements as required U/s.138 of N.I. Act and initially the presumptions are available in favour of the complainant U/s.118a and 139 of the N.I. Act. Consequently it is for the Accused to rebut the said presumptions available in favour of the complainant to show that, the cheque in question was not issued either to the complainant or towards discharge of any legally recoverable debt by producing cogent and convincible evidence but not mere suggestions or even by plausible explanation.

In view of above, this Court is of the considered opinion that there are disputed question of facts, which can only be adjudicated by way of leading evidence. In this regard, reliance can be placed upon the judgment of the Apex Court in the case of "***Rajeshbhai Muljibhai Patel vs. State of Gujarat***" ***(2020) 3 SCC*** 794 wherein, it has been held that whenever the facts are disputed, the truth should be allowed to emerge by weighing the evidence.

5. Decision:

In light of the aforementioned discussions and court rulings, this Court believes that the complaint under Section 138 of the NI Act should not be quashed by using Section 482 CrPC when there are disputed facts that need to be decided after the parties present evidence. The Court can, however, dismiss a criminal charge under Section 138 of the NI Act based on legal objections such as limitation, but not on the contentious issue of facts. This Court has no right to get involved at this point since the contested facts will only be decided once, after the petitioner-accused has had a chance to refute the presumption in favour of the complainant under Section 139 of the NI Act, 1881. Because it lacks merit, the current petition is thus denied.

Dismissed.

(SANDEEP MOUDGIL)
JUDGE

27.08.2024
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Whether speaking/reasoned : Yes
Whether reportable : Yes