

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

**CRM-M No.39842 of 2021 (O&M)
Date of decision: 19.01.2024**

Saraswati

... Petitioner

Versus

Bhagat Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Shiv Kumar, Advocate for the petitioner.

Mr. Aditya Yadav, Advocate for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (*for short* “Cr.P.C.”) for quashing of Complaint bearing No.N.I.Act/89/2018 dated 04.07.2018 (P-6), titled as “**Bhagat Singh Versus Saraswati**”, under Section 138 of the Negotiable Instruments Act, 1881 (*for short* ‘the Act’), pending in the Court of learned Sub Divisional Judicial Magistrate, Kosli (*for short* ‘Judicial Magistrate’) as well as orders dated 03.05.2019 & 19.10.2019 along with all consequential proceedings arising therefrom.

(2) Above complaint was filed under Section 138 of the Act on 04.07.2018 and particulars of the cheque in question were given as under:-

<i>Cheque No.</i>	<i>Date</i>	<i>Amount</i>
900150	23.04.2018	Rs.11.5 Lakh

(2.1) Later on, learned Counsel for the complainant/respondent realized that above cheque number was wrongly typed due to clerical mistake and for rectification of the same, an application (P-8) for amendment to that effect was filed, which was allowed by learned Judicial Magistrate on 03.05.2019.

(2.2) Thereafter, preliminary evidence was recorded and upon taking into consideration the material available on record, petitioner was summoned to face trial under Section 138 of the Act, vide order dated 19.10.2019.

(2.3) In pursuance of the summoning order, petitioner joined the proceedings; she was released on bail and matter was adjourned from time to time by learned Judicial Magistrate. Petitioner approached this Court and obtained interim stay on 27.09.2021, which has been extended from time to time and continuing till date.

(3) Learned Counsel for the petitioner contends that while issuing Legal Notice dated 24.05.2018 (P-4) as well as in the original complaint dated 04.07.2018, number of the cheque was mentioned as “900150”; but during recording preliminary evidence of the complainant, cheque number “000017” was produced by the respondent; hence, a great prejudice has been caused to her while allowing the application for amendment on 03.05.2019. Further contends that impugned complaint, order dated 03.05.2019 and

summoning order dated 19.10.2019 along with all consequential proceedings are liable to be quashed.

In support of the above contentions, learned Counsel for the petitioner has relied upon following judicial precedents:-

- (i) Chhabra Fabrics Private Limited Versus Bhagwan Dass, Proprietor of Dhingra Handicrafts, 2014 (4) RCR (Criminal) 814;**
- (ii) Mohamad Irfan Versus Velukannan, 2017 (2) NIJ 764;**
- (iii) M/s Kumar Rubber Industries, Kapurthala Versus Sohan Lal, 2002(2) RCR (Criminal) 111.**

(4) *Per contra*, while opposing the prayer, learned Counsel for the respondent/complainant submitted that in the Legal Notice dated 24.05.2018 as well as in para 9 of the complaint dated 04.07.2018, wrong cheque number was reflected due to typing error by the Counsel and which was later on rectified vide amendment dated 03.05.2019 and the same was never challenged by the petitioner at relevant point of time. Further submitted that in the interest of justice, merely on account of such an innocuous typing mistake on the part of Counsel, the complainant should not suffer and as such, the amendment has rightly been allowed on 03.05.2019 by learned Judicial Magistrate and the same was not challenged at relevant point of time. Also submitted that application for amendment was made prior to issuance of any process; rather it was filed before recording of the preliminary evidence of the complainant. Further submitted that in the present case, notice of accusation had already been issued against the

petitioner on 16.03.2020 and she was directed by learned Judicial Magistrate to pay interim compensation to the tune of 20% of cheque amount to the complainant within sixty days; but petitioner neither deposited the interim compensation amount; nor she disclosed these material facts at the time of obtaining interim stay on 27.09.2021. Lastly submitted that present petition has been filed just to prolong the proceedings; hence, the same is liable to be dismissed with costs.

(5) Heard learned Counsel for the parties and perused the record.

(6) It is not in dispute that in the Legal Notice dated 24.05.2018 as well as at the time of filing complaint on 04.07.2018, the cheque number was mentioned as “900150” dated 23.04.2018 for an amount of ₹ 11,50,000/-. However, later on, the complainant/respondent filed an application for making amendment in para 9 of the complaint and for reference, paras 2 & 3 of the application are recapitulated as under:-

“2. That the applicant has attached cheque No. 000017 dated 23.04.2018 along with the complaint.

3. That at the time of typing of cheque in Para No.9 of the complaint the number of the cheque has been wrongly typed as 900150 which is a clerical mistake whereas the applicant in the list of witnesses at Sr. No.4 has correctly mentioned the cheque No. 000017 dated 23.04.2018. This has occurred due to clerical mistake and this mistake is to be corrected in the interest of justice.”

(6.1) Learned Judicial Magistrate, after taking into consideration the contents of the application and upon hearing Counsel for the complainant, allowed the amendment vide order dated 03.05.2019 in the following manner:-

“Application moved by complainant for seeking amendment in the para 9 of the complaint. In view of the averments made in the application and fact that the clerical mistake he stated to have been occurred while drafting the complaint so considering the averments made in the application and clerical mistake occurred. Application is allowed and permission is granted to complainant to make necessary correction in para 9 of the complaint. Now, case is adjourned to 26.07.2019 for filing amended complaint on behalf of complainant.”

(6.2) Paper-book reveals that after recording the preliminary evidence, learned Judicial Magistrate passed the summoning order dated 19.10.2019 and operative part of the same reads as under:-

“2. In the present case, the complainant got examined himself as CW1 and tendered his affidavit Ex.CW/1A along with documents i.e. original cheque bearing No. 000017 dated 23.04.2018 Ex.CW/1B, return memo dated 11.05.2018 Ex.CW1/C, copy of legal notice Ex.CW/1D, postal receipt Ex.CW1/E and prayed for summoning of the accused.

3. The learned counsel for the complainant has been heard and the record has been perused. Perusal of record reveals that the cheque in question was prima facie issued by the accused in favour of the complainant in the sum of Rs.11,50,000/-. The complainant on dishonor of the cheque got issued a legal notice against the accused within 30 days of the dishonor. The accused failed to make the payment within 15 days after the receipt of legal notice. Thereafter, the present complaint was filed within 30 days after the expiry of 15 days awarded to the accused to make the payment.

4. In view of the evidence on record, there is sufficient ground to proceed against the accused for committing the offence punishable under Section 138 of Negotiable

Instruments Act. The accused be summoned accordingly, for 02.12.2019.”

(6.3) A bare perusal of the aforesaid summoning order reveals that respondent while appearing as CW-1 produced original cheque number 000017 dated 23.04.2018 for an amount of ₹ 11,50,000/-.

(6.4) In pursuance of the aforesaid order, petitioner joined the proceedings and she was released on bail by learned Judicial Magistrate on 27.01.2020 and thereafter, notice of accusation was served against the present petitioner on 16.03.2020.

(6.5) It is not in dispute that at the time of recording preliminary evidence, the original cheque No.000017 dated 23.04.2018 for an amount of ₹ 11,50,000/- was produced and in the summoning order as well as notice of accusation also, the correct cheque number has been reflected. Again not in dispute that on 16.03.2020, petitioner was directed by learned Judicial Magistrate to pay interim compensation to the tune of 20% of the cheque amount within sixty days, but the same was never paid.

(6.6) Also noteworthy that petitioner has not disclosed about the factum of notice of accusation as well as order dated 16.03.2020 regarding interim compensation and its non-payment at the time of obtaining the interim stay on 27.09.2021; nor both these vital documents were made as part of the paper-book.

(6.7) It is worthwhile to mention here that present petition filed under Section 482 Cr.P.C. is neither an appeal, nor a revision; rather recourse to such inherent powers is available only to give effect to any order passed under the Cr.P.C. or to prevent abuse of the process of any Court or

otherwise to secure the ends of justice; but this remedy cannot be availed in a routine manner.

(6.8) As discussed above, petitioner has concealed the material facts i.e. notice of accusation as well as the order dated 16.03.2020 regarding payment of interim compensation of 20% and its non-payment within the stipulated period of sixty days; rather it was not paid even till filing of the petition; hence, in such a scenario, there is no hesitation to observe that petitioner has not approached this Court with clean hands. Thus, the petition is liable to be dismissed only on that count.

(6.9) Even the judicial precedents relied upon by learned Counsel for the petitioner are also not helpful in any manner for the following reasons:-

(i) *In Chhabra Fabrics case (supra), accused had been acquitted by learned JMIC in a complaint under Section 138 of the Act and the acquittal was under challenge before this Court under Section 378(4) Cr.P.C.*

(ii) *In Mohamad Irfan case (supra) also, accused had been acquitted by learned JMIC under Section 255 (1) Cr.P.C and the same was challenged before this Court under Section 378(4) Cr.P.C.*

(iii) *In M/s Kumar Rubber case (supra), during trial before learned JMIC, different set of cheques were produced; therefore, the complaint was quashed under Section 482 Cr.P.C. and for reference, relevant part of para No.49 is extracted as under:-*

“49. *Obviously, the complaint is based upon the cheques bearing Nos.466337 to 466340. While that being so,*

the complainant introduced into evidence the cheques bearing Nos.2287334 to 2287337 in proof of the complaint. So, we find that the cheques on which the complaint is based, have not been produced, whereas a different set of cheques was produced into evidence. The summoning order has been passed only on the basis that the cheques concerned in the complaint were 466337 to 466340 only without taking into of the fact that a different set of cheques was introduced into evidence.”

As already discussed, in the present case, at the time of recording preliminary evidence, correct original cheque number i.e. “000017” dated 23.04.2018 for an amount of ₹ 11,50,000/- was produced. Thus, the judgments (*supra*), relied upon by the petitioner, are distinguishable on facts.

- (6.10) In view of the above, there is no option except to dismiss the present petition.
- (6.11) Ordered accordingly.
- (7) The above observations may not be construed as an expression of opinion on merits of the present case in any manner.
- (8) Pending application(s), if any, shall also stand disposed off.

19th January, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes