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

**CRM-M-41294-2023 (O&M)
Date of decision : 09.01.2024**

Chander Pal

...Petitioner(s)

Versus

The Fatehabad District Primary Cooperative
Agriculture & Rural Development Bank
Limited and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Bhavdeep Singh Mamli, Advocate,
for the petitioner.

MAHABIR SINGH SINDHU, J.

Present petition under Section 482 of Code of Criminal Procedure (for short “Cr.P.C”) is for quashing of Complaint No. NACT/602/2019 dated 17.07.2019 (P-1) filed under Section 138 of Negotiable Instruments Act (for short “the Act”); and summoning order dated 07.09.2019 (P-3), passed by learned Judicial Magistrate First Class, Fatehabad (for short, ‘the JMIC’).

2. It transpires that above complaint was filed by The Fatehabad District Primary Co-operative Agriculture & Rural Development Bank Limited, Fatehabad through its Assistant Manager (hereinafter referred as “the complainant”), against the petitioner alleging that in discharge of his existing legal liability, petitioner issued a cheque bearing No.591193 dated 18.06.2019, for an amount of

Rs.1,81,100/- in favour of the complainant. The aforesaid cheque was presented for encashment; but the same was dishonoured with the remarks of “*no such account*” by the Axis Bank Limited, Fatehabad *vide* Memo dated 20.06.2019. Thereafter, a legal notice dated 26.06.2019 was served upon the petitioner (through registered as well as ordinary post) calling him to make the payment; but he failed to do so and that resulted into filing of the complaint under Section 138 of the Act.

2.1. Paper book reveals that during preliminary evidence, the complainant brought on record affidavit Ex.CW1/A along with documents; i.e. original cheque Ex.C1; return memo. Ex.C2; legal notice Ex.C3; postal receipt Ex.C4; copy of loan account Ex.C5; resolution/authority letter as Ex.C6.

2.2 Learned JMIC, after examining the records and upon recording satisfaction, summoned the petitioner *vide* impugned order dated 07.09.2019 to face trial for the commission of an offence punishable under Section 138 of the Act.

3. It is contended by learned counsel for the petitioner that as per the case of complainant itself, cheque in question was returned on 20.06.2019 with the remarks of “*no such account*” by the Axis Bank Ltd., Fatehabad; and a legal notice dated 26.06.2019 was sent to the petitioner for payment of cheque amount within a period of 15 days from its receipt.

3.1 Further contended that complaint under Section 138 of the Act was filed on 17.07.2019, i.e. merely after expiry of 21 days from sending legal notice; thus, the complaint having been filed before expiry of 30 days from the date of issuance of legal notice, would not be legally sustainable

4. Heard learned counsel for the petitioner and perused the paper-book.

5. Although, learned counsel for the petitioner was requested to apprise this Court about the latest position of complaint and to show *zimni* (interim) orders w.e.f. 06.10.2023 uptil date, but he failed to do so, for the reasons best known to him.

As a result thereof, the *zimni* (interim) orders dated 06.10.2023, 12.10.2023, 18.10.2023, 07.11.2023 & 06.12.2023 have been retrieved from the official website and the same are taken on record as Mark 'X' (colly.). Registry to do the needful.

6. A perusal of the aforesaid *zimni* (interim) orders reveal that after serving notice of accusation, evidence of the complainant was closed on 18.10.2023 and matter was adjourned to 07.11.2023 for recording statement of petitioner under Section 313 Cr.P.C. On 07.11.2023, the petitioner was produced in custody (as he is stated to be an accused in another case); his statement was duly recorded under Section 313 Cr.P.C by learned JMIC and proceedings were adjourned to 06.12.2023 for defence evidence, if any and for arguments. Again on 06.12.2023, the petitioner was produced in custody (being an accused

in another case); but no DW was present and on his request, case has been adjourned to 16.01.2024 *“for defence evidence, if any and for arguments otherwise”*. For reference, the order dated 06.12.2023 is recapitulated as under:-

“Accused Chander Pal produced before me in custody in some other case. His presence is hereby marked.

No DW is present. Adjournment sought by learned defence counsel. Heard. Allowed. Now, to come up on 16.01.2024, for defence evidence if any and for arguments otherwise.

Till then accused be kept in judicial custody and be produced before the Court in person on the date fixed, if he remains in custody till then.”

In view of the discussion made here-in-above, it is apparently clear that trial is at the fag end and it is the petitioner who is delaying the matter while not leading any defence evidence.

7. In such a scenario, this Court is of the opinion that present petition is nothing, but complete misuse of the process of the Court just to prolong the complaint pending before learned JMIC. Hence, no case is made out to interfere with the impugned summoning order; and/or to quash the complaint pending under Section 138 of the Act.

8. Needless to say that in a given case, to prevent the abuse of process of the Court or to otherwise, secure the ends of justice, powers under Section 482 Cr.P.C can be invoked; but here, situation is entirely different. Hence, at this stage, plea raised by learned counsel

for the petitioner is of no relevance and would be considered in an appropriate case.

9. As a result thereof, there is no option, except to dismiss the present petition.

10. Ordered accordingly.

11. However, it is clarified that observations made above, be not construed as an expression of opinion on the merits of controversy pending before learned JMIC, in any manner.

12. Since summoning order was passed way back on 07.09.2019; therefore learned JMIC is requested to proceed in the matter expeditiously without granting unwarranted adjournment(s) to either of the parties and progress report be sent to the Registry by 30th of April, 2024.

13. Pending application(s), if any, shall also stand disposed off.

09.01.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

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