



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

**CRM-M-39896-2024
Date of decision : 20.08.2024**

Gaurav Soni

.....Petitioner

versus

Abhey Singh Dahima

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Davinder Pal Soni Jaura, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 19.09.2023 passed by learned Judicial Magistrate Ist Class, Gurugram in Complaint bearing NACT/51912 of 2019 filed under Section 138 of the Negotiable Instruments Act titled as Abhey Singh Dahmia Vs. Gaurav Soni registered on dated 14.11.2019 whereby the petitioner was directed to deposit 20% of the cheque amount in dispute.

The brief facts of the case are that the petitioner approached the complainant to sell his shop i.e. Raboo Jewellers, Main Bazaar Tauru and accordingly, the complainant and the petitioner entered into an agreement on 06.02.2018 for total sale consideration of Rs.30,00,000/-. Out of the said amount, complainant paid Rs.5,00,000/- as advance/earnest money to the petitioner through bank transfer on 06.02.2018; Rs.20,00,000/- was paid in cash and Rs.5,00,000/- through bank transfer on 22.02.2018 and petitioner received entire sale consideration from the complainant and petitioner assured the



complainant to execute and register the sale deed in his favour till 21.03.2018 but petitioner did not execute and register the same on the date fixed. Complainant requested the petitioner either to refund the entire amount with interest or to execute the sale deed in his favour but petitioner instead of discharging his legal liability towards the complainant issued cheque of part payment cheque No.002388 dated 19.09.2019 of Rs.8,00,000/- drawn on ICICI Bank in favour of the complainant with assurance that the said cheque would be encashed upon its presentation. Thereafter, the complainant presented the said cheque at Axis Bank Limited Branch, the Paradies Mall, Sector 49, Gurugram for clearance however, the same was returned back with remarks "Funds Insufficient" and thereafter, legal notice was issued on 19.10.2019 and ultimately, complaint under Section 138 of NI Act was filed.

Learned counsel for the petitioner has stated that in the abovesaid complaint, preliminary evidence of complainant was recorded and the trial Court issued summons to the petitioner for 17.12.2019. He submits that as the petitioner was not aware about the abovesaid complaint case hence, he failed to appear in the trial Court and was declared as proclaimed person. He submits that thereafter, petitioner was arrested by the police and produced in the Court in custody and after that, he was granted regular bail by the trial Court. He submits that the trial Court without considering the facts and circumstances of the case, allowed the application filed by the complainant and passed the impugned order dated 19.09.2023 whereby the petitioner was directed to pay 20% of the cheque amount to the complainant as interim compensation within a

period of 60 days. Learned counsel for the petitioner has stated that learned Judicial Magistrate Ist Class, Gurgaon has wrongly allowed the application moved by the complainant and has not appreciated the case of the petitioner. He has submitted that he could not arrange the money within the stipulated time of 60 days granted by the learned Judicial Magistrate Ist Class and now he is ready to pay the above-said amount within a period of 60 days from today.

Heard. As the petitioner is now ready to join the proceedings and pay 20% of the cheque amount as interim compensation to the complainant so, it is directed that the petitioner will deposit 20% of the amount of compensation before the trial Court within a period of one month from today and on his doing so, the trial Court will issue notice to the complainant and pay him the said amount forthwith. No coercive action will be taken against the petitioner for a period of 30 days from today enabling him to comply with the abovesaid direction. In case petitioner fails to comply with above-said direction then the trial Court will be obliged to proceed against him as per law.

Petition stands disposed of in above terms.

20.08.2024
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No