

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

205

CRM-M-51705-2022

Date of Decision: 28.08.2024

NARESH KUMAR

.....PETITIONER

V/s

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Dr. Rau P.S.Girwar, Advocate with
Ms. Archana Arora, Advocate for the petitioner.

Mr. B.S.Virk, Sr. DAG, Haryana.

Mr. Sandeep Yadav, Advocate for the respondent no.2

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C. for quashing of complaint dated 19.04.2022 under Section 138 of the Negotiable Instrument Act, 1881, and also the summoning order dated 05.05.2022 passed by the learned Judicial Magistrate Ist Class, Gurugram.

2. The allegations as averred in the complaint are that complainant was partner of M/s Global Platform office at H.o.374, Palam Vihar Road, Ashok Vihar, Phase-III Extension, New Om Sweets, Gurugram, Haryana and on 10.03.2022, a Settlement Deed was executed between the parties according to which an amount of Rs.9.00 lacs were to be given to the complainant as full and final legal liability. As per the Settlement Deed, accused No.2 & 3 namely Nilesh Dhasrath and Naresh Kumar respectively being the partners of the firm – M/s Global Platform,

were the Incharge of the said firm and as such, in discharge of the legal liability, accused No.2 issued one cheque bearing No.354095 dated 10.03.2022 amounting to Rs.9.00 lacs drawn on Yes Bank Ltd., Ansal Plaza, Palam Vihar, Gurugram, of Account No.064763400000355 and handed over the same to the complainant with an assurance that the cheque would be encashed as and when it would be presented to the bank for collection. However, the said cheque on presentation with the banker of the complainant for realization was returned by the accused's banker – State Bank of India, Mehrauli Road, Gurugram, vide memo. Dated 15.03.2022, with the remarks "Payment Stopped by Drawer". Even legal notice dated 23.03.2022, served, through counsel, upon the accused did not serve any fruitful purpose. Hence, the complaint was filed against the accused and summons were issued vide order dated 05.05.2022.

Thereafter, Judicial Magistrate Ist Class, Gurugram, has, vide order dated 05.05.2022, summoned the accused No.3 to face trial of the complaint under Section 138 of the Negotiable Instrument Act. Accordingly, the summoning order is also under challenge alongwith the main complaint, in the present petition.

3. It is contended by the learned counsel for the petitioner that the service of the legal notice was incomplete since the complaint itself mentions that the accused left the residence but no information about office address was available. Further, the cheque, in question, was not honoured only due to the defreezing of the account of the firm – M/s Global Platform however, these facts have been overlooked by the learned Court below.

4. He vehemently argues that the Petitioner many a times requested the complainant/respondent No.2 to visit the bank so as to get his name removed from the bank account of the firm but he never paid any heed to the same. Therefore, the petitioner is not at fault and accordingly, the main complaint and summoning order are liable to be quashed.

5. Learned State Counsel and the learned counsel for respondent No.2, supporting the summoning order, have contended in one word that the learned Court below has rightly summoned the accused/petitioner because the petitioner is one of the partners and, as per the Partnership Deed, all the partners are equally responsible for the deeds of the firm. As such, no fault can be found with the summoning order and accordingly, the present petition is liable to be dismissed.

6. Heard and case file also perused.

7. According to the version in complaint, the complainant and the accused No.2 & 3 were partners of the firm M/s Global platform and a Settlement, amounting to Rs.9.00 lacs, was arrived at between them on 10.03.2022 which was reduced into writing vide Settlement Deed,(Annexure P-1). The cheque issued in discharge of legal liability by co-accused -Nilesh Dasrath Mane, was dishonoured by the banker of the firm – M/s Global Platform on the ground “Payment Stopped by Drawer”. The legal notice was allegedly served upon both the accused but the said legal notice was received back with the remarks that accused left the residence and no information was available about official address.

8. From the above facts and circumstances, it can be easily understood that the service of the legal notice upon accused were never affected because they were neither found on their residential address nor their official address was known to the complainant/respondent No.2.

Further, the cheque was allegedly issued by one Nilesh Dasrath Mane whereas the Court below has summoned Naresh Kumar, who is accused No.3 in the complaint and further there is no averment in the complaint that he is the signatory of the cheque. Therefore, summoning order is prima facie illegal and defective.

9. In “*K. Bhaskaran v. Sankaran reported in (1999) 7 SCC 510, and in Dalmia Cement (Bharat) Ltd. v. M/s. Galaxy Traders reported in AIR 2001SC*

676”, the Hon“ble Supreme Court held that to constitute an offence under section 138 N.I. Act, the complainant is obliged to prove its ingredients which includes the receipt of notice by the accused under Clause (b). It is to be kept in mind that it is not the 'giving' of the notice which makes the offence but it is the 'receipt' of the notice by the drawer which gives the cause of action to the complainant to file the complaint within the statutory period

10. Consequently, in view of the above stated facts and the dictums of the Apex court, the present petition succeeds and is allowed for having failed to fulfil ingredients of section 138 of NI Act on the whole.

11. Therefore the impugned complaint, (Annexure P-5) dated 19.04.2022, and the summoning order,(Annexure P-3) dated 05.05.2022 are hereby accordingly quashed qua the petitioner.

28.08.2024
Meenu

(SANDEEP MOUDGIL)
JUDGE

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