

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

CRM-M-46742-2019

Date of Decision :05.01.2024

DALVINDER SINGH

.....Petitioner

VERSUS

M/S SOLAR FIRST ENERGY PVT. LTD.

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Naresh Prabhakar, Advocate
for the petitioner.

Mr. Mandeep Singh Sachdev, Advocate,
for the respondent.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, prayer is made for quashing of complaint case bearing No.NACT/4370/2019, dated 05.09.2019 (Annexure P-6) and the summoning order dated 10.09.2019 (Annexure P-9), vide which the petitioner has been summoned to face trial for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The gist of allegations against the petitioner are that he had purchased a solar power generating system, of 3 KW capacity from the respondent-company (complainant) on credit basis and the total value of the said unit was Rs.2,15,000/-, inclusive of all taxes. The Tax Invoice dated 30.01.2019 in respect of the aforesaid amount was also issued to the petitioner.

3. There is no wrangle amongst the contesting parties that against the tax invoice (*supra*) the petitioner had paid a sum of

Rs.1,50,000/-, leaving a balance of Rs.65,000/-.

4. The petitioner, in order to discharge his balance financial liability (*supra*), issued a cheque bearing no.055955, dated 30.07.2019 for a sum of Rs.43,000/- in favour of the respondent/ complainant company, drawn on Central Bank of India, Dugri Road, Basant Avenue, Ludhiana. However, on presentation of the said cheque, the same was dishonoured by the bank concerned, the reason being that, the petitioner had stopped payment of the cheque.

5. The dishonour of cheque led the aggrieved to institute the impugned complaint against the petitioner, whereupon, the learned trial Court concerned, vide impugned order dated 10.09.2019 (Annexure P-9), summoned the petitioner to face trial.

6. At the time of issuance of notice of motion on 02.11.2019, this Court had directed the petitioner to cause appearance before the trial court in pursuance of the summoning order (*supra*). It is not under dispute that the petitioner, in compliance of the aforesaid order of this Court had caused appearance before the trial Court.

7. Learned counsel for the petitioner, in order to throw a challenge to the impugned complaint as well as the summoning order (*supra*), has made twofold submissions, i.e. there is no outstanding legal liability to discharge against the petitioner, as the issuance of cheque was based upon a contingent condition and that condition is yet to be fulfilled, therefore, no legal liability whatsoever became levied upon him to discharge such liability, which could invite the petitioner to face trial under Section 138 of the Negotiable Instruments Act, 1881 and,

secondly, that he had duly replied to the statutory legal notice served upon him by the respondent/complainant company through Annexure P-5 and the complainant concealed that reply and nowhere mentioned in the complaint.

8. He has further placed reliance upon the judgment passed by this Court in “**Baldev Singh vs. State of Punjab and another**” 2006(1) RCR (Crl.) 119 and “**Richa Sharma alias Happy vs. State of Punjab**” 2001(1) RCR (Crl.) 438.

9. Furthermore, to strengthen his arguments, learned counsel for the petitioner, submits that in case, the impugned complaint has been filed on concealment of vital facts, the same is required to be quashed by invoking the provisions of Section 482 Cr.P.C.

10. On the other hand, learned counsel for the respondent submits that since the issues, which have been raised by learned counsel for petitioner, are disputed question of facts, therefore, the same are required to be proved by way of adduction of evidence, by both the parties, at the relevant stage before the trial Court.

11. He further submits that insofar as, the issue of conditional agreement is concerned, it was the petitioner, who was to apply for the subsidy, however, he failed to apply for the subsidy, therefore, because of his default, the right of the complainant can't be defeated. He further submits that the fact of receipt of reply to the legal notice has been specifically denied in the reply.

12. This Court has heard learned counsel for the contesting litigants and have gone through the record(s).

13. The issue that the cheque was based upon a contingent condition, is required to be proved by leading cogent evidence, by both the parties, before the learned trial Court concerned. This Court, merely upon reading the conditions attached with the invoice, cannot conclude that the other conditions, which the petitioner is required to fulfill, have been fulfilled.

14. Insofar as the issue of non-disclosure of reply to the legal notice at the time of filing the impugned complaint by the complainant is concerned, it is also highly disputed question of fact, as the respondent/complainant has denied the factum of receipt of the reply, therefore, at this stage, this Court refrains from interfering in the instant matter, leaving liberty to the petitioner to raise all the plea(s), which have been raised before this Court, before the learned trial Concerned, at an appropriate stage.

15. Learned trial Court concerned shall without being influenced from the observations, made hereinabove by this Court, decide the complaint on its own merits.

16. Consequently, the instant petition is dismissed with the aforesaid observations.

January 05, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

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