

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-51144-2019 (O&M)

Date of Decision: 19.07.2024

Gurjinder Singh & Anr.

... Petitioners

VS.

Vinay Kumar Setia

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. CM Munjal, Advocate for the petitioners

Mr. Salil Dev Singh Bali, Advocate for the respondent

Sandeep Moudgil, J.

(1). This petition under Sections 482 CrPC has been filed by the petitioners seeking quashing of the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) bearing No.NACT/1113/2018 dated 01.11.2018 “Vinay Kumar Setia vs. Gurjinder Singh” (Annexure P4) as well as the summoning order dated 11.07.2019 passed by CJM, Fazilka (Annexure P6).

(2). Learned counsel for the petitioners contends that the subject cheque was given in execution proceedings to the complainant and the same had dishonoured as the signatures did not tally. Learned counsel has invited the attention of the Court to the reply sent by him to the statutory notice wherein a fresh cheque for the same amount was sent by petitioner to the complainant and the petitioners, in order to show their eagerness to honour the cheque, even issued Cheque No.044110 dated 06.10.2018 along with the reply.

(3). Mr. Munjal has also pointed out that instead of encashing the above-stated cheque, the complainant filed the impugned complaint without disclosing the said reply sent by the petitioners. He further states that the

amount has otherwise been paid to the complainant in the execution proceedings.

(4). Learned counsel for the respondent averred that the cheque that was dishonoured could not be repaid within the stipulated time and the stand of the petitioner that he had sent the fresh cheque along with the reply has been denied by the respondent and the same would be a matter of trial. He also submits that the alternative cheque, allegedly submitted by the petitioner to satisfy the dishonoured cheque, cannot be accepted as the same was after the stipulated time.

(5). In the subsequent reply dated 10.07.2024 filed by the respondent, it has been admitted that an amount of Rs.2,50,000/- in the shape of demand draft was deposited by the petitioner on 06.02.2017 before the Executing Court but that fact itself does not absolve the petitioner from the criminal liability under Section 138 of the NI Act. Reliance has been placed on **Rajneesh Aggarwal s. Amit J. Bhalla AIR 2001 SC 518.**

(6). Heard learned counsel for the parties.

(7). Pursuant to dismissal of suit and appeal filed by the respondent relating to eviction of the petitioner from the suit property and a direction was issued to the petitioner to pay rent, the respondent filed execution of judgment and decree dated 19.03.2014 as modified in appeal vide judgment and decree dated 12.05.2016, wherein the matter was referred to National Lok Adalat Fazilka and the parties arrived at compromise vide award dated 08.09.2018. The petitioner agreed to vacate the suit property and a lump sum rent of Rs.10,50,000/- was settled to be paid by him to the respondent. However, the cheque given by the petitioner was returned by the Bank as the signature did

not match. The respondent hurriedly sent legal notice dated 21.09.2018 and in reply thereto sent on 06.10.2018, the petitioner came forward to honour the cheque and also sent the new cheque bearing No.044110 dated 06.10.2018.

(8). The petitioner has even proved on record the bank statement w.e.f. 15.09.2018 till 29.10.2018 during which the cheque was issued to the respondent to show that there were sufficient funds available in his bank account. So much so, it is an admitted position of fact that the amount in dispute has already been received by the respondent.

(9). Legally speaking, the contention of the respondent and reliance placed on **Rajneesh Aggarwal's** case is ill-founded and deserves to be rejected because the petitioner has been ready and willing from the date when legal notice was sent to him by the respondent. The petitioner even showed his *bona fide* and submitted fresh cheque as the earlier cheque given by the petitioner could not honoured due to non-matching of signature. Moreso when the amount stood received by the respondent, letting to continue the proceedings in the criminal complaint would be an abuse of process of law.

(10). Accordingly, this petition is allowed and the criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) bearing No.NACT/1113/2018 dated 01.11.2018 “Vinay Kumar Setia vs. Gurjinder Singh” (Annexure P4) as well as the summoning order dated 11.07.2019 passed by CJM, Fazilka (Annexure P6) are hereby quashed.

19.07.2024

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No