

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

SR. No.118

**CRM-M-64517-2023
Date of decision:30.01.2024**

Paramjit Kaur Mutiar

...Petitioner

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Nitin Verma, Advocate for
Mr. S.K. Chawla, Advocate for the petitioner.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure with a prayer to quash Complaint No.275/23 dated 05.07.2023 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') and the summoning order 06.07.2023 (Annexure P-2) passed by Sub-Divisional Judicial Magistrate, Gohana, whereby the petitioner has been summoned to face trial under Section 138 of the NI Act.

2. The complaint in the present case was filed by respondent No.2/complainant by alleging that the present petitioner/accused was recorded as owner of the double storey house measuring 10 Marlas, situated at village Udekaran, Tehsil & District Sri Muktsar Sahib. On 23.11.2021, the petitioner/accused entered into a full payment agreement to sell her house to

respondent No.2 for total sale consideration of Rs.35.80/- lakhs and the

petitioner had duly executed a receipt regarding receiving the amount of Rs.35.80 lakhs from respondent No.2, in the presence of two witnesses. After executing the agreement to sell, in first week of May, 2023, the petitioner made a call to respondent No.2 and expressed his inability to execute the sale deed in favour of respondent No.2, due to a family dispute and agreed to get the full payment agreement cancelled on returning of consideration amount of Rs.35.80 lakhs. Consequently, the petitioner issued a cheque bearing No.723775 amounting to Rs.35 lakhs from her account in favour of respondent No.2. Respondent No.2 deposited the said cheque with his banker, however, the said cheque was dishonoured with the remarks "funds insufficient". Respondent No.2/complainant served a statutory notice through his counsel upon the petitioner, still the petitioner did not make the payment of the amount equal to the amount mentioned in the dishonoured cheque. With these broad allegation, a complaint under Section 138 of the NI Act was filed by respondent No.2 against the present petitioner.

3. After presentation of complaint (Annexure P-1), respondent No.2/complainant appeared as CW-1 and exhibited the documents as Ex.C1 to Ex.C5 and the preliminary evidence was closed. Ultimately vide impugned order dated 05.07.2023, the Court of Sub Divisional Judicial Magistrate, Gohana summoned the petitioner to face trial under Section 138 of the NI Act. Challenging the complaint (Annexure P-1) and the impugned summoning order (Annexure P-2), the petitioner has approached this Court for quashing of the complaint as well as the summoning order.

4. Learned counsel for the petitioner contends that admittedly the agreement to sell dated 23.12.2021 was executed between the petitioner and

respondent No.2 and the petitioner had agreed to sell her house, however, the possession of the house was never delivered by the petitioner to respondent No.2. After few days, the agreement to sell was cancelled. Respondent No.2/complainant, who had already taken security cheques from the petitioner and respondent No.2 had promised to return the cheque and to destroy the original agreement to sell.

5. Learned counsel further contended that in fact there had been no actual purchase of the house by respondent No.2/complainant. Still further, it was unbelievable that agreement to sell was executed on 23.11.2021 and the period of enforcement of such agreement was three years, which was unbelievable. Still further, in the present case, no suit for specific performance of agreement was filed by the respondent No.2. Still further, respondent No.2 had not explained the mode of payment of Rs.35.80 lakhs in favour of petitioner. Learned counsel further submitted that the cheque was alleged to be presented with Axis Bank, Sri Muktsar Sahib for encashment and in view of the provisions contained in Section 142 of the NI Act, the complaint was not maintainable before the Court of SDJM, Gohana.

6. I have heard learned counsel for the petitioner at length and perused the case file minutely.

7. In fact the submissions made by learned counsel for the petitioner are self-contradictory. On the one hand, the petitioner has admitted that vide the agreement to sell dated 23.12.2021, the petitioner had agreed to sell her house to respondent No.2, whereas on the other hand, the petitioner alleged that there had been no actual or factual purchase of the house by

respondent No.2/complainant. Still further, it has been argued that

respondent No.2 had already taken a security cheque from the petitioner and there was a promise to return the cheque to the petitioner. Even the said submission made by petitioner is highly unbelievable. In fact the payment was made by respondent No.2 to the petitioner and when the petitioner did not agree to sell the land/house to respondent No.2, the petitioner issued a cheque of Rs.35,00,000/- in favour of respondent No.2.

8. Still further, learned counsel for the petitioner wrongly submitted that the cheque was presented by respondent No.2 at Sri Muktsar Sahib and the complaint was not maintainable before the Court of SDJM, Gohana, in view of the provisions contained in Section 142 of the NI Act. In fact, the petitioner had clearly stated in the complaint that the cheque was presented by respondent No.2/complainant at Gohana and the intimation regarding dishonour of the cheque was received by respondent No.2/complainant from his banker at Gohana. Thus, in view of the provisions contained in Section 142 of the NI Act, the complaint was maintainable at the place, where the payee/holder in due course i.e. respondent No.2 was maintaining his account.

9. Even otherwise, the petitioner has raised several disputed questions of fact, which can never be adjudicated by this Court, while exercising the jurisdiction under Section 482 Cr.P.C. The Hon'ble Supreme Court as well as this Court have held in a catena of judgments that while deciding a petition under Section 482 Cr.P.C., this Court cannot be permitted to hold a mini trial and the disputed questions of fact can be adjudicated only by the trial Court, after permitting both the parties to adduce their respective

evidence. In fact, such a course can never be adopted by this Court and the petition in hand is baseless.

10. In view of the above discussion, there is no merit in the present petition and accordingly, the same is dismissed.

29.01.2024
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO