HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRM-M-16576-2025 (O&M)
Date of Decision: 07.04.2025
****

M/s Kissan Petrol Oil Pvt. Ltd. & Anr. ... Petitioners

VS.

M/s Chem Fine ... Respondent
****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
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Present: Mr. Rajinder Sharma, Advocate for the petitioners
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Sandeep Moudgil, J.

(1). This petition has been filed under Sections 482 CrPC for quashing the complaint No.NAT-7082-2022 registered on 02.05.2022, pending in the Court of JMIC, Ambala (Annexure P1) and summoning order dated 20.05.2023 (Annexure P2) passed by the Court of JMIC, Ambala vide which the petitioner has been summoned to face trial under Section 138 of Negotiable Instruments Act, 1881 (in short, the NI Act).

(2). Learned counsel for the petitioner contends that respondent-complainant filed complaint under Section 138 of NI Act against the petitioner on the ground that both the parties had business dealing with each other in terms of agreement dated 01.08.2019. It has been alleged that the complainant provided financial help to the petitioner and in lieu thereof, he issued three cheques drawn on Syndicate Bank (which stands merged with the Canara Bank as on 01.04.2020) and being fully aware of this fact, the respondent-complainant wantonly presented the above said cheques in the Bank which was returned with remarks "BANK MERGED" and as per Section 138 of the NI Act, it shall be enforceable only when there is a cheque/instrument which is negotiable under the law.

(3). It is further argued that the most important ingredient of offence under Section 138 of the NI Act is that the instrument should have been returned for insufficiency of funds, which ingredient is also badly missing in the present case and this fact has gone unnoticed by the trial court which has not appreciated the fact that there is no proof of insufficiency of funds and memo of bank is regarding only BANK MERGED. Section 138 of the NI Act is reproduced as under:-

> ***"138. Dishonour of cheque for insufficiency, etc., of funds in the account***. - *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of*

information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

(4). Lastly, it has been averred by learned counsel that the respondent even filed complaint before the police and the said complaint was enquired into and finally consigned by the Assistant Commissioner of Police, Central Noida, Gautambudh Nagar on 29.12.2022. It is further submitted that the respondent had earlier filed CRM-M-29051-2023 in regard to another cheque No.240074 dated 30.11.2021 wherein the respondent categorically admitted the fact that he was in possession of the cheque at earlier point of time by way of security of goods supplied for job work and at the time of presentation of the cheque in the Bank, the respondent had knowledge that the bank had merged which suggests that the complainant was in possession of cheques long ago and when the Bank had merged then the alleged cheque was no more an instrument under Section 138 of NI Act.

(5). Having heard learned counsel for the petitioner, this Court is of the considered view that this petition deserves to be rejected. The ground that the Bank had merged and by that means, the instrument i.e. cheque fell beyond the purview of Section 138 of NI Act is erroneous, for the reason that the amalgamation of two or more banks into a single entity, only consolidates their operations, assets, and liabilities and by no stretch of imagination, such a merger of banks affects the liability of the drawer under Section 138 of NI Act. The legal responsibility for a dishonoured cheque remains with the drawer, regardless of whether the bank on which the cheque was drawn has merged with another bank. It needs no special mention that the merged entity inherits all rights and obligations of the original bank, including those related to cheque dishonour cases. The payee can still initiate proceedings under Section 138 of NI Act against the drawer by way of complaint and the underlying cause of action and the legal process remain unchanged. The dishonor of a cheque under Section 138 requires specific conditions to be met, including proper presentation and notice to the drawer and the merger of the bank does not negate these requirements.

(6). Further, a perusal of the impugned court passed by the trial court would show that the petitioner No.2 is the Director of petitioner No.1-company and the cheques were issued to the respondent by the petitioners in discharge of their existing liability. The petitioners have nowhere, in express terms, denied the business relationship with the respondent nor is there any material to show that the petitioners had made their due payments within the stipulated period and as such, prima facie, there are sufficient grounds to proceed against the petitioners under Section 138 of NI Act. Furthermore, the petitioners can, at any stage, establish against its liability towards the respondent by undergoing trial proceedings.

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

07.04.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*