

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

CRMC No. 497/2016
IA No. 01/2016

Pronounced on : 23rd.06.2020

Ravi Kumar Sharma

.... Petitioner(s)

Through:- Mr. Amit Gupta, Advocate

V/s

Yoginder Singh

.....Respondent(s)

Through:- Mr. S. C. Subash, Advocate

Coram : **HON'BLE MS. JUSTICE SINDHU SHARMA, JUDGE**

JUDGMENT

01. Petitioner seeks quashing of criminal proceedings in which cognizance under section 138 of the Negotiable Instrument Act, 1881 has been taken by the Sub-Judge/Special Mobile Magistrate, Jammu on the complaint filed by the respondent.

02. The complaint was filed on 26.05.2015 by the respondent/complainant herein alleging that the petitioner borrowed a sum of Rs.2,50,000/- from the complainant and after some time, he issued a cheque No. 710470 dated 05.02.2015 drawn on *Ellaquai Dehati Bank, Branch Lower Roop Nagar, Jammu* for liquidation of the debts. The cheque was presented by the respondent/complainant for payment but the said cheque was dis-honoured vide memo dated 20.03.2015.

03. During the proceedings, statements of Yoginder Singh and his witness-Surinder Khanna were recorded by the Trial Court.

04. The petitioner seeks exercise of the inherent powers of this Court under Section 561-A Cr.P.C, on the ground that the complaint is false and frivolous, because as per Income Tax Act, every loan beyond Rs.2,00,000/- could be advanced only through cheque and since the complainant has nowhere pleaded in his complaint that the amount was paid in cheque, therefore, it is a violation of Section 266 (ss) of the Income Tax Act and the stand of the respondent-complainant is that he paid Rs. 2,50,000/- in cash is false.

05. The petitioner in para 5, of the petition submits that the cheque No. 710470 dated 05.02.2015 drawn on Ellaquai Dehati Bank, Branch Lower Roop Nagar, Jammu is not valid because after the introduction of Cheque Truncated Scheme (CTS) in the year 2011, all previous cheques were invalidated by the Reserve Bank of India (RBI). The RBI has categorically issued a notification wherein it is stated that Non-CTS cheques will not be presented before the Bank for encashment from December 31, 2013. Therefore, the cheque not having CTS authentication automatically would be invalidated in terms of the guidelines issued by the RBI. The above referred cheque alleged to have been given to the petitioner carries date of 05.02.2015, which is totally wrong and manipulated by the respondent himself.

06. Thus, on this count only, the complaint is liable to be dismissed because the cheque for which, the complaint was filed could not have been presented before the Bank and, as such, the same could not have been encashed also for the reason that it became obsolete by December 2013, therefore, it is not legally enforceable debt against which the complaint under Section 138 of Negotiable Instrument Act. Moreover, the cheque

could not have been given by the petitioner herein on 05.02.2015 because the same had become obsolete and it is categorically mentioned in the statement duly made by the petitioner that the cheque was issued from Mr. Surinder Khanna in the year 2006-2007. These are the only grounds of challenge reflected in the petition.

07. Petitioner submits that cheque dated 05.02.2015 is a Non-CTS cheque which was issued to him by the Bank on 22.02.2006. This means the cheque book from Serial Nos.710451 to 710500 was issued to the petitioner on 22.02.2006 and the same has been certified by the Bank Manager on 29.07.2016 in response to the application of the respondent.

08. The petitioner has also stated that the cheque in question was given by him to PW-Surinder Khanna in 2006-2007, and if that is the case, then advance loan of Rs.2,50,000/- is also not disputed because PW-Surinder Khanna has admitted this fact. The petitioner has annexed the statement of the complainant and his witness Surinder Khanna, who also state that he gave a cheque to him which was also not honoured by the Bank. He also stated that the accused has to pay many more peoples from whom, he had borrowed the money. There is no challenge to this part of the statement. However, it is not the duty of this Court to appreciate the evidence, it is the duty of the trial court to do so.

09. Considering the facts of the case, the powers of this Court under Section 561-A Cr.P.C. are not to promote such litigation which is opposed to the concept of justice which is also a paramount importance because the petitioner has nowhere denied his signatures on the cheque, therefore, he claims to know so much about income tax and CTC, yet he issued a cheque, which was not CTC which borders on cheating and fraud, though the

respondent has not filed any case of cheating before the police against him, but the respondent appears only interested in recovery of his money and no harassment to the accused. Same, however, cannot be said for the petitioner.

10. This apart, the trial Court is nearing conclusion of the trial and, if the petitioner is so sure of his stand, he may take his chance for it, before the trial Court, as he has delayed the trial by filing this petition instead of arguing the matter in the trial Court.

11. For all what has been discussed above, this petition is **dismissed** being without any merit. Connected IA also stands dismissed.

12. Parties through their counsel are directed to appear before the trial Court on 10.08.2020.

(Sindhu Sharma)
Judge

JAMMU

23rd.06.2020

Ram Murti

Whether the order is speaking : Yes

Whether the order is reportable : Yes/No