

Jitendra Singh Vs. Sadhu Ram Chauhan

Cr.MMO No. 567 of 2024

26.06.2024 Present: Mr. Sumit Sood and Mr. Rohit, Advocates, for the petitioner.

Notice be issued to the respondent, returnable for 23.07.2024, on taking steps within one week.

Cr.MP No. 2429 of 2024

Notice in aforesaid terms. Reply, if any, be filed on or before next date of hearing.

Having perused the material available on record, this court finds that complaint under Section 138 of Negotiable Instruments Act has been filed against the petitioner-accused on the ground that cheque amounting to Rs. 5,00,00,000/- having been issued by him being authorized representative of company, namely "The Topride Cab Services Private Ltd." towards discharge of its lawful liability has been dishonoured on account of insufficient funds. Though, perusal of complaint filed under Section 138 of Negotiable Instruments Act, clearly reveals that cheque in question was issued towards discharge of lawful liability of company, named hereinabove, but interestingly company has been not arrayed as accused and as such, there appears to be merit in the contention of learned counsel for the petitioner that the complaint filed under 138 Negotiable Instruments Act is not maintainable. Reliance in this regard is placed upon judgment passed by Hon'ble Apex Court in ***Himanshu Vs. Shivamurthy & Anr., (2019) 3 SCC 797.***

In the aforesaid case, issue which fell for consideration, before the Hon'ble Apex Court, was, "whether an authorized signatory of a company would be liable for prosecution under Section 138 of the Negotiable Instruments Act without the company being arraigned as an accused?"

In the aforesaid case, Hon'ble Apex court has categorically held that authorized signatory of company cannot be held liable for prosecution under Section 138 Negotiable Instruments Act, without the company being arraigned as an accused.

In view of above, prayer made on behalf of applicant/petitioner for interim relief deserves to be allowed. Accordingly, further proceedings in Criminal Case No. 324 of 2019 titled Sadhu Ram Chauhan Vs. Jitendra Singh under Sections 138 and 142 of Negotiable Instruments Act, pending before the court of learned Judicial Magistrate First Class Court No. II, Paonta Sahib, District Sirmaur, H.P., shall remain stayed.

June 26, 2024
(Sunil)

(Sandeep Sharma),
Judge