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In the High Court of Punjab and Haryana at Chandigarh.

CRM-M-11700-2009
Date of Decision:23.09.2015

Manoj Kaushal

...Petitioner

Versus

Manoj Arora

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.K. Pipat, Senior Advocate, with
Mr. Manoj Kumar Pundir, Advocate,
for the petitioner.

Mr. Gurpal Sandhu, Advocate,
for Mr. SPS Sidhu, Advocate,
for the respondent.

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SABINA, J.

Petitioner has filed this petition challenging the orders dated 09.07.2008 and 13.02.2009.

Learned Senior counsel for the petitioner has submitted that so far as the petitioner is concerned, he was working as Marketing Executive of the Company-accused No.1. The cheque in question was not issued by the petitioner. In fact, the cheque in question was issued by accused Rajnath Singh and Gurmail Singh Rai, Directors of the Company. Hence, the petitioner could not be proceeded criminally qua dishonour of cheque in question.

Learned counsel for the respondent, on the other hand, has opposed the petition.

In the present case, respondent has filed complaint under Sections 138 and 142 of the Negotiable Instruments Act, 1881 ('of the Act' for short) and Section 420 of the Indian Penal Code, 1860 with regard to dishonour of cheque dated 10.04.2006 in the sum of ₹1,00000/-. So far as petitioner is concerned, he was working as a Marketing Executive in the Company. The cheque in question is not signed by the petitioner but was signed by Rajnath Singh and Gurmail Singh Rai, Directors of the Company. The said fact is evident from the complaint itself.

In these circumstances, trial Court fell in error in ordering the summoning of the petitioner to face the trial qua commission of offence punishable under Section 138 read with Section 142 of the Act. Petitioner cannot be held liable for the dishonour of the cheque in question, which was never issued by him. The cheque in question was issued by the Directors of the Company in favour of the complainant.

In the case of **State of Haryana** vs. **Bhajan Lal, 1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

> "The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482,

Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do no disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

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(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted)to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

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Hence, continuation of criminal proceedings against the petitioner would be nothing but abuse of process of law.

Accordingly, this petition is allowed. Summoning order dated 09.07.2008 qua the petitioner is quashed. Consequently, the order dated 13.02.2009 passed by the Court of Revision on a revision petition filed by the petitioner is set aside.

September 23, 2015 **(SABINA)**
kapil **JUDGE**