HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-27272-2013
Date of decision:14.8.2015

Balwinder Verma @ Bobby

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Naveen Batra, Advocate for the petitioner.

Ms.Anmol Grewal, AAG, Punjab.

Mr.Vivek Thakur, Advocate for the complainant.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure (`Cr.P.C.' for short), seeks quashing of FIR No.112 dated 15.10.2012 registered under Section 420 of the Indian Penal Code (`IPC' for short) at Police Station Anandpur Sahib, District Rupnagar and consequential proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply on behalf of respondent-State has been filed. A separate reply was filed on behalf of the complainant.

Learned counsel for the petitioner submits that once the petitioner already stood acquitted of the charges framed against him under Section 138 of the Negotiable Instruments Act, 1881 (`NI Act' for short) vide judgment dated 8.2.2012, passed by the learned Sub Divisional Judicial Magistrate, Anandpur Sahib, registration of the impugned FIR and continuation of proceedings arising therefrom, for the offence under Section 420 IPC is nothing but a misuse of process of law, because the impugned FIR is based on the same set of allegations, which were levelled against the petitioner in the complaint under Section 138 of the NI Act. He also submits that continuation of the criminal proceedings arising out of the impugned FIR would amount to double jeopardy against the petitioner. In support of his contentions, learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in **Kola Veera Raghav Rao v. Gorantla Venkateswara Rao and another, 2011 (2) SCC 703** and a judgment of this Court in **Prince Kumar v. State of Punjab and another, 2013 (2) RCR (Crl.) 874**. He prays for quashing the impugned FIR and consequential proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State submits that the present petition is wholly misconceived. She further submits that acquittal of the petitioner in a complaint case under Section 138 of the NI Act would not absolve him from the offence committed by him under Section 420 IPC. It is also a matter of fact and record as well, that petitioner, while proceeding on his malafide intention, signed a cheque from the cheque book of his mother, in favour of the complainant, knowing fully well that it would amount to an offence punishable under Section 420 IPC. She also refers to the judgment of the Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel v. State of Gujarat and another, 2012 (7) SCC 621**. She prays for dismissal of the present complaint.

Similarly, learned counsel for the complainant vehemently contended that petitioner is a habitual offender. Besides the impugned FIR, he has been found involved, at least in three more FIRs registered under Section 420 IPC at Districts Rupnagar, SAS Nagar (Mohali) and Kapurthala. The first FIR bearing No.99 dated 29.8.2013 was registered at Police Station, Anandpur Sahib on a complaint of one Kuldeep Sharma, wherein allegation of cheating of an amount of Rs.30 lacs was levelled against the petitioner. Second FIR bearing No.267 dated 16.10.2013 was registered at Police Station SAS Nagar (Mohali) on the complaint of one Jagbir Singh who has also been defrauded by the petitioner and third FIR bearing No. 146 dated 24.5.2014 was registered at Police Station, Kapurthala City, wherein petitioner defrauded one Makhan Singh on the pretext of sending him abroad. He further submits that apart from the above-said FIRs, there are some other criminal cases pending against the petitioner. While referring to para 16 of the judgment of acquittal dated 8.2.2012, whereby petitioner was acquitted of the charges framed against him under Section 138 of the NI Act, learned counsel for the complainant submits that it was observed by the learned court that the complainant has a remedy to take action against the accused under the provisions of any other law as applicable. He places reliance on two judgments of the Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel v. State of Gujarat and another, 2012 (7) SCC 621** and **Mohit alias Sonu and another v. State of U.P. and another, 2013 (7) SCC 789**. He also prays for dismissal of the instant petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in view of the peculiar facts and circumstances of the present case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinabove.

It has gone undisputed on record that with a view to discharge his existing financial liability, petitioner issued cheque no.076823 dated 3.5.2007 for an amount of Rs.8.50 lacs in favour of the complainant, from Account No. 815 of Oriental Bank of Commerce, Anandpur Sahib. On presentation to the bank, the above-said cheque came to be dishonored. When the petitioner did not pay the above-said amount to the complainant despite notice, the complainant filed a complaint under Section 138 of the NI Act.

During the course of trial of this complaint under Section 138 of the NI Act, petitioner took the plea that the cheque in question was not drawn on his account, rather it was drawn on the account of his mother and the complaint was not maintainable. On the basis of the above-said plea having been taken on behalf of the petitioner-accused, in the criminal trial of complaint under Section 138 of the NI Act, the learned trial Court framed three questions for determination and the first was as follows:-

> *"a) Whether the cheque in question was drawn on account being maintained by accused?"*

While taking the above-said plea that the cheque in question was not drawn on his account, accused-petitioner relied upon the judgment of the Hon'ble Supreme Court in **Jugesh Sehgal v. Sharnsher Singh Gogi, 2009 (4) CCC 443**. The Hon'ble Supreme Court, while interpreting the scope of Section 138 of the NI Act, laid down six ingredients to constitute an offence under Section 138 of the NI Act and first ingredient was as follows:-

> *"a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account"*

Since the cheque in question which was admittedly signed by the petitioner was not drawn on his account, because the holder of account No. 815 of Oriental Bank of Commerce, Anandpur Sahib, was not the petitioner but his mother, he came to be acquitted and rightly so by the learned Sub Divisional Judicial Magistrate, Anandpur Sahib, vide judgment of acquittal dated 8.2.2012. However, the learned Sub Divisional Judicial Magistrate, Anandpur Sahib, rightly observed that the complainant has a remedy to take action against the accused under the provisions of any other law as applicable. That is how, impugned FIR came to be registered against the petitioner under Section 420 IPC.

A combined reading of the impugned FIR (Annexure P-1), legal notice (Annexure P-2), reply to legal notice (Annexure P-3), complaint under Section 138 of the NI Act (Annexure P-4), charge sheet dated 5.3.2013 in the criminal proceedings arising out of the impugned FIR against the petitioner (Annexure P-5) as well as the judgment dated 8.2.2013 (Annexure R-1) leaves no room for doubt that registration of the impugned FIR against the petitioner and also consequential proceedings arising therefrom, would certainly not amount to double jeopardy. It is so said, because petitioner has been proceeding on his malafide intention right from day one.

Knowing fully well that he was not the account holder of the above-said account No. 815 of Oriental Bank of Commerce, Anandpur Sahib, petitioner himself signed cheque No.076823 dated 3.5.2007 and issued the same in favour of the complainant, for the purpose of discharging his existing financial liability to the tune of Rs.8.50 lacs. In this view of the matter, it can be safely concluded that *mens rea* was very much there. Petitioner tried to play smart with his malafide intention to cheat the complainant. Admittedly, this was not the fact situation in any of the judgments relied upon by the learned counsel for the petitioner, because of which none of them has been found of any help to the petitioner, being clearly distinguishable on facts.

Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In the present case, the learned trial Court vide its order dated 5.3.2013 (Annexure P-5) has charge sheeted the petitioner, as under:-

> *"That in the year 2007, you accused borrowed an amount of Rs.8,50,000/- from complainant Rajiv Kumar with the promise to return the same within 2-3 months, but you did not return the said amount and on demand of complainant, on 3.5.2007 you issued a cheque No.076823 while putting your signatures on the same whereas said cheque was of your mother Surjit Rani and thus you while putting your signatures on abovesaid cheque, committed cheating with complainant and thereby committed an offence punishable u/s 420 IPC and within cognizance of this Court."*

So far as the necessary ingredients for constituting the offences under Section 138 of the NI Act and under Section 420 IPC are concerned, the same are and always have been distinct and entirely different from each other. *Mens rea* is not one of the ingredients for constituting the offence under Section 138 of the NI Act, whereas it so required for constituting an offence under Section 420 IPC. Further, for an offence under the NI Act, there is a statutory presumption that the accused had issued the cheque for discharging his existing financial liability. Although the said presumption is rebutable, yet it is to be rebutted only by the person who draws the cheque. There is no such requirement for the offences under the Indian Penal Code including an offence under Section 420 IPC. Again, in the cases under the NI Act, when fine is imposed, the parties thereof are to meet the legally enforceable liability, whereas there is no such requirement for the offence under the Indian Penal Code. Criminal proceedings under the NI Act, are to be initiated only by filing a complaint, whereas it is not necessary for putting the criminal law into motion, for an offence under the Indian Penal Code.

The above-said view taken by this Court also finds support from the law laid down by the Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel's** case (supra). The relevant observations made by the Hon'ble Supreme Court in paras 27 and 28 of its judgment, which can be gainfully followed in the present case, read as under:-

> *"Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of*

> *issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under N.I. Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under N.I. Act can only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary.*
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> *There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."*

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel's** case (supra), it is unhesitatingly held that the star argument raised by the learned counsel for the petitioner, which seems to be attractive at the first blush, has been found liable to be rejected, being bereft of any merit, on a deeper consideration thereof. There is no scope for invoking the principle of double jeopardy to the peculiar fact situation of the present case. In this view of the matter, the impugned FIR as well as the consequential proceedings arising therefrom, including the above-said charge sheet, have been found a bona fide and legitimate prosecution and the same cannot be quashed, for this reason also.

It is pertinent to note here that although the inherent jurisdiction of this Court under Section 482 Cr.P.C. is wide enough, yet it is equally true that it is to be exercised sparingly and with circumspection. In view of what has been discussed hereinabove, the present one has not been found to be a fit case, warranting any interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., which is to be exercised for avoiding the abuse of process of law and to secure the ends of justice.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant petition stands dismissed, however, with no order as to costs.

14.8.2015 **(RAMESHWAR SINGH MALIK)**
mks **JUDGE**