

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-38284 of 2014 (O&M)
Date of Decision: 19.10.2015**

Ajay Sachdeva

.....Petitioner

Vs.

M.s Garg Tading Co., through its proprietor Parmod Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Reeta Kohli, Sr. Advocate with
Mr. Anirudh Gupta, Advocate
for the petitioner.

Mr. N.K.Manchanda, Advocate
for the respondent.

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

RAMESHWAR SINGH MALIK J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the criminal complaint No. 300-2 dated 2.8.2013, titled as 'M/s Garg Trading Company, Shop No. 70, Bazar No.2, Ferozepur Cantt, through its Proprietor Parmod Kumar Vs. M/s Food Pvt. Ltd and others', under Section 138 of Negotiable Instruments Act, 1881,

pending in the Court of learned JMIC, Ferozepur (Annexure P-1) alongwith subsequent proceedings arising therefrom, including summoning order dated 2.8.2013 (Annexure P-2), passed by the learned trial court.

Notice of motion was issued.

At the very outset, learned counsel for the respondent raised a preliminary objection about maintainability of the present petition. He submits that it is a matter of record that petitioner has not availed his equally efficacious alternative remedy of revision before the learned Sessions Judge. He further submits that when the remedy of revision is very much provided under the Cr.P.C. itself, petitioner ought to have availed his alternative remedy, at the first instance ,instead of approaching this Court, by way of instant petition. He seeks dismissal of the present petition.

Faced with the above, learned senior counsel for the petitioner tried to justify filing of the present petition without availing the remedy of revision against the impugned summoning order, at the first instance. She further submits that although it is a matter of record that petitioner has not availed his alternative remedy of revision, yet in view of the peculiar facts and circumstances of the case, he is entitled to file and maintain the present petition under Section 482 Cr.P.C., before this Court. In support of her contentions, learned senior counsel for the petitioners places reliance on the following judgments of the Hon'ble Supreme Court:-

1. M/s Pepsi Fods Ltd Vs. Special Judicial Magistrate, 1998 (5) SCC 749

2.G.Sagar Suri Vs. State of U.P., 2000 (2) SCC 636

3. M.s Zandu Pharmaceutical Works Ltd. Vs. Md. Sharaful Haque, 2005 (1) SCC 122

4. M.A.A. Annamalai Vs. State of Karnataka and another, 2010 (8) SCC 524

5. Manoj Mahavir Prasad Khaitan Vs. Ram Gopal Poddar and another, 2010 (10) SCC 673

6. M/s GHCL Employees Stock Option Trust Vs. M/s India Infoline Limited, 2013 (4) SCC 505.

She prays for over-ruling the preliminary objection raised on behalf of the respondent and for allowing the present 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 present petition is not maintainable and the same is liable to be dismissed, relegating the petitioner to avail his equally efficacious alternative remedy of revision, provided under the Code of Criminal Procedure itself. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and also undisputed between the parties that petitioner was having an equally efficacious alternative remedy, in the form of criminal revision before the learned Sessions Judge, against the impugned summoning order. It is also not in dispute that before filing the present petition under Section 482 Cr.P.C., petitioner did not file any revision petition against the impugned summoning order.

Since this Court has already passed a comprehensive order on this very issue in CRM-M-42234 of 2014 (M/s Janta Land

Promoters Ltd and another Vs. Deputy Commissioner of Income Tax, Chandigarh) decided on 19.10.2015, present petition is also disposed of in terms of the abovesaid judgment, relegating the petitioner to avail his alternative remedy of revision against the impugned summoning order.

As this Court has not gone into merits of the cases, the observations made hereinabove will not influence the learned revisional court, while deciding the case on merits, so as to avoid any prejudice to the rights of either of the parties. It is also clarified that if the appropriate revision petition will be filed by the petitioner against the impugned summoning order within a period of one month from the date of receipt of certified copy of this order, respondent shall not raise the issue of limitation against the petitioners herein.

Resultantly, with the abovesaid observations made and directions issued, present petition stands disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

19.10.2015
Ak Sharma