

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

CRR-2172-2013

Date of Decision: November 18, 2015

Jagjit Singh alias Jit Singh

.....Petitioner

Versus

Gurcharan Singh Randhawa and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

- 1. Whether Reporters of local papers may be allowed to see the judgment ? Yes**
- 2. To be referred to the Reporters or not ? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr.Sunil Chadha, Sr.Advocate with
Ms.Arti Kaur, Advocate
for the petitioner.

Mr.Vivek K.Thakur, Advocate
for respondent No.1.

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NARESH KUMAR SANGHI, J.(ORAL)

Challenge in the present criminal revision petition is to the order, dated 25.03.2013, passed by learned Sessions Judge, Kapurthala, whereby the criminal revision petition filed by Gurcharan Singh Randhawa, complainant, challenging the order dated 20.01.2011, passed by learned Additional Chief

Judicial Magistrate, Kapurthala, dismissing the complaint filed by him (Gurcharan Singh Randhawa, complainant), was allowed and the matter was remitted to learned Area Judicial Magistrate to re-evaluate/re-assess the preliminary evidence led by the complainant.

Mr.Sunil Chadha, learned senior Advocate representing the petitioner, Jagjit Singh, submits that learned Additional Chief Judicial Magistrate after scanning the pros and cons of the whole case correctly opted to dismiss the complaint titled 'Gurcharan Singh vs Jagjit Singh and another', vide its order dated 20.01.2011. He further submits that the reasons recorded by the learned trial Magistrate are tenable on facts and law and, as such, the order passed by learned Sessions Judge remanding the case to the Board of learned Area Judicial Magistrate for re-evaluating/re-assessing the whole case is liable to be set aside.

Brief facts of the case are that Gurcharan Singh Randhawa, respondent/complainant, filed complaint No.248, dated 11.12.2008, against the petitioner, Jagjit Singh and respondent No.2-Tirath Singh (non-petitioner) for having committed the offences punishable under Sections 120-B, 420, 465, 467, 468, 471 and 506, IPC, alleging that Tirath Singh had

financial dealings with him (Gurcharan Singh Randhawa). On that account Gurcharan Singh Randhawa issued ten blank signed cheques to Tirath Singh in the year 2003. Later on Gurcharan Singh Randhawa paid the entire due amount to Tirath Singh, however, the blank signed cheques issued by Gurcharan Singh Randhawa remained with Tirath Singh only. After some time Gurcharan Singh Randhawa requested Tirath Singh to return the said cheques, however, he (Tirath Singh) started delaying the matter. In the month of August 2008, petitioner -Jagjit Singh filed a complaint against Gurcharan Singh Randhawa alleging that Gurcharan Singh Randhawa was a travel agent and he (Gurcharan Singh Randhawa) charged ₹6,00,000/- (Rupees six lacs only) from him (Jagjit Singh) for sending Jagjit Singh and his wife to a foreign country, but failed to do so. On demand, Gurcharan Singh Randhawa issued six post dated cheques in order to return ₹6,00,000/- (Rupees six lacs only) charged by him (Gurcharan Singh Randhawa) from Jagjit Singh for sending Jagjit Singh and his wife to a foreign country. The matter was also reported to the police. A panchayat was also convened in which Tirath Singh confessed that cheques on the basis of which Jagjit Singh had filed the complaint were handed over to him (Jagjit Singh) by Tirath Singh. It was further alleged that Jagjit Singh also

confessed that Tirath Singh had to pay ₹4,00,000/- (Rupees four lacs only) to him (Jagjit Singh) but there was no dealing of Jagjit Singh with Gurcharan Singh. In that regard a *panchayatnama* was scribed and even a video film was prepared. The Station House Officer of Police Station, City, had also submitted his report in that regard. Reply to the notice received after filing of the complaint under Section 138 of the Negotiable Instruments Act, 1881, was issued by Gurcharan Singh Randhawa. It was further alleged by Gurcharan Singh Randhawa that Jagjit Singh and Tirath Singh extended threats to him when the request was made to return the cheques. It was alleged that in order to extract money from Gurcharan Singh Randhawa, the cheques were forged and, as such, Jagjit Singh and Tirath Singh had committed the offences for which the complaint was filed.

In order to substantiate his allegations, Gurcharan Singh appeared as CW3 and also examined Narinder Singh CW1, Malkiat Singh CW2, Sukhwinder Singh CW4, and Malkiat Singh CW5.

After hearing the learned counsel for Gurcharan Singh and going through the material available on record, learned Additional Chief Judicial Magistrate, Kapurthala, vide his order dated 20.01.2011 dismissed the complaint.

Dis-satisfied with the order of dismissal of the complaint, Gurcharan Singh Randhawa, complainant, filed Criminal revision No.29 dated 11.03.2011, before the Court of Sessions at Kapurthala, which was accepted vide order dated 25.03.2013 and the matter was remitted to the learned Area Judicial Magistrate for re-evaluating/re-assessing the preliminary evidence led by Gurcharan Singh Randhawa and to dispose of the complaint in accordance with law. The operative part of the order passed by learned Sessions Judge, Kapurthala, is as under:-

“From a careful analysis of the impugned order, it is found that the approach of the Ld.trial Court in passing this order seems to be as if the Court has been disposing of the matter, in issue, on merits, after hearing both the parties and perusing their record as well. In this impugned order, the Ld.trial Court has discussed the probable defences, which were to be taken by the accused, had they been summoned in this case. Regarding Audio C.D., the Ld. Trial Court has observed that it is of no use to prove the case of complainant, since, the voice sample of the adverse party is not on the file. But, in

this connection, it is to note that the voice sample of the adverse party can only be taken for the purpose of Voice Test Identification, if the adverse party is summoned to face the trial in the case concerned and not otherwise. Then, it has also been observed by the Ld. Trial Court that this complaint is the counter blast to the above said complaints filed under Section 138 of the said Act by accused Jagjit Singh, against the present complainant. Then, the reference is also made with regard to the validity of a Panchayat Nama. But the Ld. trial Court is not supposed to scan the preliminary evidence, at this stage of summoning of the accused in any thorough manner, in order to see its merits as well as demerits. At this stage, main concern of the Ld. Trial Court is only to see, as to whether, there is a sufficient evidence on the record, in order to hold that a prima facie case is made out to proceed against the accused for the offences or any of the offences mentioned in the complaint. Then, in this regard, there is another latest authority of our Hon'ble Apex Court on the above point, in issue, as

laid down in Nupur Talwar vs. Central Bureau of Investigation, AIR 2012 SC 1921. In this case law, it has been laid down by the Hon'ble Apex Court that for the purpose of issuing process all that concerned Court has to determine is, whether material placed before him is sufficient to proceed against accused. Term sufficient to proceed is distinct from term sufficient to prove and establish guilt..... It has also been further laid down that in a case exclusively triable by the Court of Session, all that the Magistrate has to do at the stage of S.204 Cr.P.C. is to see whether on a perusal of the evidence there is "sufficient ground for proceedings" against the accused and at this stage, the Magistrate is not required to weigh the evidence meticulously as if he was the trial Court nor is he required to scrutinize the evidence by the same standard by which the Sessions Court scrutinizes the evidence to decide whether to frame or not to frame charges under Section 227/228, Cr.P.C..... It has also been further laid down that defences available to accused need not be considered at the stage of issuance of

process.

So, in the light of above discussion and the principles laid down in the above cited case laws, it is held that approach of the Ld.trial Court in dismissing the complaint under reference, vide the impugned order is not legally justifiable. So, this revision is accepted. Impugned order is set aside. The matter is remanded back to the Ld.trial Magistrate with the direction to re-evaluate/re-assess the preliminary evidence of the complainant and to dispose of the same in accordance with the law. Parties are directed to appear before the Ld.trial Court on 10.04.2013 at 10.00 a.m. positively. Record of the Ld.trial Court alongwith copy of this judgment be sent back to the Court concerned immediately. File of this Court be consigned to the record-room."

In the matter of **U.P.Pollution Control Board vs Dr.Bhupinder Kumar Modi and anr**, 2009 (1) RCR (Criminal) 733 SC and **Nupur Talwar vs Central Bureau of Investigation**, AIR 2012 SC 1921, Hon'ble the Supreme Court has held that at the stage of summoning a person as an accused, the Magistrate is

mainly concerned with the allegations made in the complaint and the evidence led in support thereof. Learned Magistrate has to prima facie satisfy himself that there are sufficient grounds for proceeding against the accused.

The allegations levelled in the complaint and the preliminary evidence led in the shape of five CWs including the complainant himself, this Court is satisfied that learned Additional Chief Judicial Magistrate had gone beyond the scope enshrined in Sections 200 to 203, Cr.P.C.. This Court also finds that the learned Sessions Judge, Kapurthala, has correctly opted to set aside the order of dismissal of complaint by learned Additional Chief Judicial Magistrate, Kapurthala, and remitted the matter to the said Court for re-evaluating/re-assessing the whole material and then to pass appropriate order in accordance with law and, as such, there appears to be no merit in the present petition and the same is hereby dismissed.

November 18, 2015
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(NARESH KUMAR SANGHI)
JUDGE