

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

CRM No.M-14723 of 2013 (O&M)

Date of Decision: May 26, 2016

Rajinder Singh

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pardeep Solath, Advocate
for the petitioner.

Mr.Himmat Singh, Deputy Advocate General, Haryana
for the respondent-State.

Mr.S.S.Dinarpur, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Haryana and Anil Kumar for quashing of complaint No.259/2 dated 22.01.2003 and summoning order dated 20.03.2003 passed by learned Judicial Magistrate Ist Class, Ambala City and order dated 12.09.2009 passed by learned JMIC, Ambala, whereby the petitioner has been declared as proclaimed offender in proceedings under Section 138 of the Negotiable Instruments Act.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition and also filed the reply.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that respondent No.2 in the reply has taken the objection that petitioner has not filed the present petition, rather, he has filed the same through his Special Power of Attorney and the petition under Section 482 Cr.P.C. cannot be maintained by a person through his Power of Attorney. It is also stated in the reply that against the summoning order, the petitioner has filed the criminal revision before learned Addl. Sessions Judge, Ambala. When the petitioner was questioned on the ground of maintainability as to how the revision petition filed by him is maintainable on the basis of General Power of Attorney, petitioner instead of meeting the said objection, withdrew the revision petition. Respondent No.2 also took the objection that plea raised by the petitioner before this Court in support of his case, is in fact the defence set up by him and the petitioner is at liberty to take up this defence before trial Court.

It is stated in the petition that respondent No.2 was known to petitioner and in the absence of petitioner, respondent No.2 committed forgery and opened an account in Indian Bank, Ambala in the name of petitioner. Respondent No.2 introduced/identified the petitioner in the bank and also got cheque book on 19.05.1998 in the name of petitioner's account. It is further stated that in the year 2002, respondent No.2 got issued two cheques in his name amounting to ₹2,25,000/- each and got them bounced. Thereafter, respondent No.2 filed a false and frivolous complaint under Section 138 of the Negotiable Instruments Act. It is also stated that respondent No.2 visited village Lukhi and father of the petitioner refused to return the said amount of ₹4,50,000/-. On insistence of respondent No.2,

father of the petitioner gave two cheques allegedly signed by the petitioner, which was bounced on the ground of 'Funds Insufficient'.

From the record, I find that firstly the defence taken by the present petitioner in this quashing petition for quashing complaint and summoning order, is a defence and finding of fact is to be given by the trial Court on the basis of the evidence to be produced by the parties. Secondly, learned counsel for respondent No.2 cited the judgment passed by this Court in ***Amit Ahuja vs. Gian Parkash Bhambri, 2010(3) RCR (Criminal) 586***, in which petition under Section 482 Cr.P.C. for quashing the criminal proceedings was filed by accused through his Power of Attorney holder and it was held that petition is not maintainable. It is further held that petition through Power of Attorney could be maintained if the petitioner was suffering from any disability i.e. he was minor, insane or was suffering from any other disability, which, in law, is recognized as sufficient to permit any other person e.g. next friend, to move the Court, on his behalf.

I have gone through the above-cited judgment and the same fully applies in the present case.

Furthermore, against the summoning order, remedy by way of revision lies and present petitioner, also filed the revision petition, which was got withdrawn by him, which means that he has not challenged the summoning order and it has become final. As regarding other arguments that cheques were not handed over by the petitioner or it was unlawful debt etc., I find that these are finding of facts, which are to be given by the trial Court. At this stage, there is nothing on the record to show that filing of complaint amounts to miscarriage of justice or abuse of process of law. Otherwise also, the present quashing petition has been filed through Special Power of

Attorney and on this ground also, this petition is not maintainable.

Therefore, finding no merit in the present petition, the same is dismissed.

May 26, 2016
Vgulati

(INDERJIT SINGH)
JUDGE