

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 108

Date of Decision: *October 07, 2016*

1. **Criminal Miscellaneous No.M-36140 of 2016 (O & M)**

Hira Singh

..... PETITIONER

VERSUS

Sanjeev Malik & another

..... RESPONDENTS

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2. **Criminal Miscellaneous No.M-36173 of 2016 (O & M)**

Raj Pal

..... PETITIONER

VERSUS

Sanjeev Malik & another

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. G.B.S. Dhillon, Advocate, for the petitioner.

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Jaspal Singh, J

1. This judgment shall decide the aforesaid two petitions as they involve similar questions of law and facts.

2. The instant petitions under Section 438 Cr.P.C. have been preferred by the petitioners for grant of pre-arrest bail, feeling apprehension of their arrest in complaint case No.110/1 dated October 17, 2015 under

Sections 420, 120-B IPC pending in the court of Additional Chief Judicial Magistrate, Rohtak. Further, a prayer has also been made that order dated September 29, 2016 may be modified to the extent of removing the condition imposed by the trial court.

3. The instant complaint has been lodged by respondent No.2 – Sanjeev Malik on the ground that Raj Pal was facing a criminal case bearing FIR No.390 dated July 2, 2011 under Sections 420, 406, 506 IPC, Police Station, Civil Line, Rohtak, for committing cheating against respondent No.2 – complainant. On September 4, 2014, a compromise deed was executed by Hira Singh with complainant, in pursuance whereof, Hira Singh promised to repay money of complainant and issued six cheques bearing Nos.734241, 734242, 734243, 734244, 734245 and 734246 amounting to ₹ 3 lac each, without writing any date and ₹ 5 lac in cash were deposited with mediator Bhupender @ Prince, which was to be paid to complainant after acquittal of Hira Singh in the aforesaid FIR case. An assurance was also given that the cheques would be honoured within six months from the date of execution of compromise deed. Accordingly, Raj Pal was acquitted on September 18, 2014 in view of compromise deed dated September 4, 2014, whereafter, Bhupender @ Prince handed over ₹ 5 lac in cash alongwith cheques to complainant after 15 days of release of Raj Pal. In regard to the cheques, complainant came to know that account of Hira Singh, with UCO Bank, Baddi, was not having sufficient amount to honour the cheques, so, cheques were not presented. Legal notice was served upon the accused – respondent(s) on May 15, 2015 but they did not pay the amount to complainant.

4. Learned counsel for the petitioner(s) has contended that petitioners have been falsely implicated in the instant complaint. No offence

under Section 420, 120-B IPC is made out as the complainant himself has admitted that he had received ₹ 5 lac in cash from mediator i.e. Bhupender @ Prince. Hira Singh had further paid a sum of ₹ 3 lac through his banker. So, no amount remained due towards the petitioners as the matter was settled for ₹ 8 lac. Moreover, the cheques were not presented in the bank.

5. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner and perused the record.

6. Undoubtedly, petitioner Raj Pal has been facing trial in case bearing FIR No.390 dated July 2, 2011 under Sections 420, 406, 506 IPC, Police Station, Civil Lines, Rohtak, on the allegations of committing cheating with complainant. Further, a compromise deed dated September 4, 2014 was executed between Hira Singh (son of Raj Pal) and complainant, whereby in lieu of acquittal of his father Raj Pal, Hira Singh assured the complainant to repay his money by issuing six cheque Nos.734241 to 734246 amounting to ₹ 3 lac each, drawn on Account No.18630110012086, UCO Bank, Baddi (H.P.) and ₹ 5 lac in cash were deposited with mediator Bhupender @ Prince. Accused Raj Pal was acquitted in the above said criminal case on September 18, 2014 by the trial court, in view of compromise. Bhupender Singh handed over ₹ 5 lac alongwith six cheques to complainant. Further, Hira Singh paid ₹ 3 lac through his banker and kept on asking the complainant to postpone the presentation of cheques on one pretext or the other. The complainant, through his banker, traced the account of accused in UCO Bank at Baddi but it was not having sufficient amount to honour the cheques. In this way, complainant was made to believe that he would get his money back in view of compromise, but accused – petitioners

court does not deem it to be a fit case to exercise power under Section 438 Cr.P.C. which is otherwise required to be exercised in exceptional cases.

7. Dismissed.

October 07, 2016
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(Jaspal Singh)
Judge

<u>Whether Speaking/ Reasoned:</u>	<u>Yes/ No</u>
<u>Whether Reportable:</u>	<u>Yes/ No</u>