

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *February 12, 2016*

1. Criminal Miscellaneous No.M-4646 of 2016 (O & M)

Darshan Singh

..... PETITIONER

VERSUS

State of Haryana & another

..... RESPONDENTS

. . .

2. Criminal Miscellaneous No.M-5056 of 2016 (O & M)

Darshan Singh

..... PETITIONER

VERSUS

State of Haryana & another

..... RESPONDENTS

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CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

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PRESENT: - Mr. Lalit K. Gupta, Advocate, for the petitioner.

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Jaspal Singh, J

1. This order shall dispose of aforesaid two petitions as they involve similar questions of law and facts.

2. Through the instant petitions, petitioner – Darshan Singh has impugned Complaint Nos.1600 & 1599 of 2015, titled 'Gurmej Singh vs.

Darshan Singh’ pending in the Court of learned Judicial Magistrate 1st Class, Panipat as well as summoning orders dated December 10, 2015, for committing an offence under Section 138 of Negotiable Instruments Act, 1881 (for short, ‘Act’).

3. The facts, as unfolded by complainant – Gurmej Singh, are that petitioner got a contract of earth work on the Express Way Agra to Lucknow and sought money from complainant for the work and agreed to give profit to him. Complainant alongwith his brother Paramjit Singh gave an amount to the tune of ₹ 60 lac to petitioner in the month of November 2014, by borrowing from his relatives, friends and villagers. In the month of July 2015, petitioner told the complainant that he will give money to him but will not give profit of work. Petitioner agreed to give ₹ 65,12,000/- to complainant and his brother. In the month of August 2015, complainant asked the petitioner for payment of money but he tried to linger on the matter on one pretext or another. At last, he issued two cheques bearing Nos.00274 dated October 10, 2015 and 000456 dated October 12, 2015 of ₹ 5,12,000/- and ₹ 30,00,000/-, respectively, from his account No.50200003761814, drawn from HDFC Bank, Branch IOCL Refinery, near BSNL Building, Panipat Bohli in the name of complainant and third cheque bearing No.323143 dated October 12, 2015 in the name of complainant from his account bearing No.10432168877 drawn from State Bank of India, Panipat Refinery Bohli, District Panipat. Complainant presented cheques Nos.323143 and 000456 in his bank(s), however, the same were returned by the Bank(s) with remarks ‘SIGNATURE DIFFER’ and ‘FUND INSUFFICIENT’. In this backdrop of facts, complainant approached the court of competent jurisdiction by filing the instant

complaints, wherein, vide orders dated December 10, 2015, accused – petitioner has been summoned to face trial under Section 138 of the Act.

4. Aggrieved by the aforesaid complaints and summoning orders, petitioner has approached this Court.

5. While challenging the impugned complaint as well as the summoning order, it has been argued by learned counsel for the petitioners that the same are liable to be set aside being based upon wrong, illegal and concocted facts. Infact, there is no evidence or material available on record to constitute an offence under Section 138 of the Act. The case put-forth by respondent No.2 is that of giving money to the petitioner to share the profit in his business after becoming partner, thus and not of a loan or the legal enforced debt and liability. Infact, when the petitioner refused to give profit, then he presented the cheques in the bank which were earlier stolen by him regarding which DDR No.6 dated October 6, 2015 was registered at Police Station, Saurik, District Kanauj (U.P.). Moreover, complaint itself spells out and talks about terms & conditions of an agreement which may attract civil liability if any but not at all a criminal liability. Since no legally enforceable debt and liability of petitioner is pleaded in the complaint, the case contemplates under Section 138 of the Act, is not attracted. There is nothing on the record to suggest either in complaint or in evidence adduced by respondent No.2 during preliminary evidence that the cheques in question have been issued in discharge of his existing liability. There is a simple assertion in this regard which cannot take the place of an evidence.

6. It has further been submitted by the learned counsel that trial court has also not gone through the record of the case and fell into an error while summoning the petitioner by not considering that there is no document

in Ex.C-1 to Ex.C-7 like bank account statement, any slip or receipt, agreement, income tax return or any other material which could not show any existed or pre-existed legal enforced debt liability of petitioner or any other document to show that respondent No.2 was in a position to part with such a heavy amount of ₹ 30 lac to the petitioner in lieu of cheque. Moreover, the cheques have been returned un-paid by the bank with the remarks “Signature Differ/ Insufficient Funds”. When the signatures appearing on the cheques are in some different hands than that of respondent No.2, then, issuance of cheques which were mis-placed and subsequently came into the hands of respondent No.2 by petitioner does not arise. Moreover, no expert evidence has been led by respondent No.2 to the preliminary evidence that cheques bear his (petitioner) signatures.

7. While concluding, it has been submitted by learned counsel for the petitioner that since no offence under Section 138 of the Act is made out even from the allegations levelled in complaint if taken to be true on its face value and further that, the cheques have been dishonoured on account of “Signature Differ”, no offence can be said to have been made out to proceed against the petitioner under Section 138 of the Act. Thus, complaint as well as impugned order are liable to be set aside/quashed.

8. This Court has given deep thought to the submissions made by learned counsel for the petitioner and have scanned the complaint as well as impugned order.

9. The scope of power under Section 482 Cr.P.C. came up for consideration before the Hon’ble Apex Court in Nagawwa v. Veeranna Shivalingappa Kanjalgi, (1976) 3 SCC 736 wherein, it was observed that the Magistrate while issuing process against the accused should satisfy himself

as to whether the allegations in the complaint, if proved, would ultimately end in conviction of the accused. The Apex Court also culled out certain guidelines as to in what circumstances the order passed by the Magistrate issuing process against the accused can be quashed. The Hon'ble Apex Court pointed out the following circumstances:-

“(i) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

10. Similarly, in State of Haryana vs. Bhajan Lal, 1992 SCC (Cri.) 426, apart from reiterating the earlier conclusion laid down by the Hon'ble Apex Court, it was further explained that such power could be exercised where the allegations made in the FIR/complaint are so absurd and inherently improbable, on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

11. It is also equally settled that while entertaining petition under Section 482 Cr.P.C., materials furnished by the defence cannot be looked into and can be entertained only at the time of trial. Further, when there are *prima facie* materials available against the accused, a petition for

quashing criminal proceedings cannot be entertained and is not maintainable. The Court should have the freedom to go into the whole gamut of allegations and to reach a conclusion on its own. To buttress this observation, we can have the reference of pronouncement of Hon'ble Supreme Court captioned as Ravindra Kumar Madhanlal Goenka & another vs. Rugmini Ram Raghav Spinners Private Limited, (2009) 11 SCC 529.

12. Now, in the light of aforesaid settled principles, it is to be seen whether there is any scope of interference in the summoning order passed by the Magistrate.

13. As far as the mis-placing of cheques and subsequent custody thereof with respondent No.2, is a matter of evidence and can be just a defence put-forth by the petitioner which cannot be entertained at this stage. To the similar effect is the other submission that there was some dispute with regard to share of profit in the business of petitioner and that of respondent No.2. At the time of passing the summoning order, only allegations contained in the complaint and preliminary evidence adduced by the complainant to establish the same are to be taken into consideration and if the complaint as well as the impugned summoning order are scrutinized, these clearly spell out the allegations and averments which *prima facie* constitute an offence under Section 138 of the Act. As such, no infirmity or illegality can be attached to the summoning order to meddle with the same. The case of the petitioner does not fall within parameters which have been laid down for quashing the complaint or summoning order. Rather, this Court is of the considered view that summoning order is absolutely in consonance with the evidence available on file and the settled canons of law.

14. In the light of what has been discussed above, this Court does not find any merit in both the petitions and as such, same are dismissed.

February 12, 2016
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(Jaspal Singh)
Judge