

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

CRM-M No.8161 of 2016

Date of decision: 6th December, 2016

Harvinder Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. G.S. Dhaliwal, Advocate for the petitioner.

FATEH DEEP SINGH, J.

The petitioner Harvinder Singh, who also happens to be an accused in case bearing FIR No.42 dated 06.02.2015 under Sections 420/406 IPC pertaining to Police Station City Khanna (Annexure P/1) has sought quashing of the FIR and all proceedings arising therefrom.

The contentions of learned counsel for the petitioner are that the petitioner has no dealings with M/s Sood Traders after 22.04.2013 and it was on the notice of Income Tax Department on 22.08.2014 reply to which was made by him wherein allegations were levelled about transactions of firm M/s Hari Om Rice and General Mills, Khanna of high value and claimed that in fact respondent No.2 in connivance with Mandeep Sood and Anil Sood, the latter owners of the firm, had misused the cheque of the petitioner and after fabrication and forgery put the same in the bank encashment box which was sent back

dishonoured regarding which the private respondent No.2 had filed a complaint (Annexure P/4) under Section 138 of the Negotiable Instruments Act, 1881 and has sought to take the plea that on the same allegations, FIR in question (Annexure P/1) has been registered and therefore, in view of the provisions of Section 300 Cr.P.C. the petitioner cannot be prosecuted twice for the same offence.

After hearing at length Mr. G.S. Dhaliwal, Advocate on behalf of the petitioner and perusing the records of the two cases. The FIR case is on the basis of allegations of fraud by the petitioner accused for having duped the complainant on the pretext of selling a plot of land and on which pretext he had received the amount in question and refusing to return back the same since respondent No.2 is an NRI. The allegations in the complaint are dishonour of the cheque which was issued by the petitioner in acknowledgement of the outstanding liability. Thus, the contentions that his cheque has been misused as levelled by the petitioner in connivance with the partners the private respondent/complainant are subject matter of evidence to be appreciated at the time of trial which cannot be gone into under the provisions of Section 482 Cr.P.C. in the light of law laid down by the Hon'ble Supreme Court in '**M.Viswanathan v. M/s S.K. Tiles Potteries P. Ltd. & others**' 2008 AIR (SC) 761. Furthermore, the provisions of Section 300 Cr.P.C. deals with a person once convicted or acquitted cannot be tried for the same offence thereby propagating the principle of double

jeopardy. Admittedly, the petitioner is still facing trial in both the matters and neither question of acquittal nor conviction could be highlighted and in the FIR case after completion of investigations, challan has been submitted and charges have been framed and trial is underway. More so, the allegations in the complaint hover around dishonour of cheque, a clearly distinct and separate offence from the allegations that the petitioner has committed cheating by fraudulent misrepresentation and duping the complainant of his valuable money and which is quite separate in point of time and manner of the offence and therefore provisions of Section 300 Cr.P.C. are not attracted. In the light of the same, no ground to show indulgence is made out.

Finding no merit the present petition stands dismissed in limine. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

December 6, 2016

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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