

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

CRM-M-14714-2015(O&M)

Date of decision:10.11.2017

Mahesh Darbari

...Petitioner

Versus

Master Capital Services

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Himanshu Rai, Advocate, for the petitioner.

Mr. I.S.Rana, Advocate, for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of Complaint No.618, dated 13.06.2001 (Annexure P-4) and the summoning order dated 23.02.2015 (Annexure P-12).

Brief facts of the case are that the respondent- complainant has filed a complaint under Section 138 of the Negotiable Instruments Act way back in 2001 against the petitioner and his father late Sh. Laxman Swarup Darbari.

As per the averment in the complaint, the petitioner was GPA of his father and, on account of some settlement, a cheque of ₹.4 lacs was issued by the petitioner as GPA of his father. In complaint also it is mentioned that some balance was outstanding in the account book of the complainant against the accused, which was confirmed by them.

Later on, the trial Court vide order dated 28.01.2001 summoned the petitioner as well as his father and it was also noticed in this order that the complainant has produced Ex. C-4, statement of the account, while forming an opinion to summon the petitioner.

Later on, the petitioner filed CRM-M-3133 of 2002, praying for quashing of the complaint and the summoning order. Vide judgment dated 05.04.2004, this Court allowed the same and quashed the complaint on the ground that Court at Ludhiana has not jurisdiction. Against this order, the respondent-complainant filed Criminal Appeal No. 863 of 2006, (SLP (Crl.) No.2521 of 2004) and vide order dated 21.08.2006, the same was allowed by Hon'ble Supreme Court, by observing that the Ludhiana Court has the jurisdiction and the complaint is not liable to be quashed.

Still aggrieved, the petitioner filed a second quashing petition i.e. CRM-M- 47276 of 2007 and the same was dismissed as withdrawn on 13.01.2009 by him, reserving his right to avail the remedy, to raise all the arguments before the trial Court at appropriate stage.

Thereafter, the complainant, filed an application for discharging him and the trial Court vide order dated 27.02.2010, dismissed the same by holding that in a summons case, there is no stage to discharge the accused persons. The trial Court also passed another order dated 06.08.2010, in which the petitioner again reagitated the point of jurisdiction holding that the Hon'ble Supreme Court, vide order dated 21.08.2006, has already held that Ludhiana Court has jurisdiction to try the present complaint.

Petitioner, thereafter, filed a criminal revision before the Court of Session, challenging the order dated 06.08.2010 and the same was dismissed vide order dated 17.12.2010. Thereafter, the petitioner moved another application before the trial Court for directing the complainant to withdraw the complaint and present the same before the Competent Court having the jurisdiction. The trial Court again dismissing the same vide

impugned order dated 23.10.2010 by holding that the matter has already been settled by Hon'ble the Supreme Court and the petitioner is reagitating the same matter again and again. With reference to the arguments raised by the petitioner that in the light of the judgment of Hon'ble the Supreme Court in *Dashrath Rupsingh Rathod Vs. State of Maharashtra*, in Criminal Appeal No. 2287 of 2009, it was observed that the same will not be applicable in the present case as it is observed in the judgment that once the trial begins, it will continue at that place and in the instant case, the evidence of the complainant has already started.

Counsel for the petitioner has submitted that the petitioner has no legal liability towards the complainant; the Court at Ludhiana has no jurisdiction; and the complaint is not maintainable against the petitioner.

On the other hand, learned counsel for the respondent has submitted that the petitioner is trying to delay the proceedings on one pretext or the other, the complaint is pending since 2001 before the trial Court and the trial Court is still at the stage of recording the complainants evidence. It is also submitted that the petitioner, while filing the second quashing petition i.e. CRM-M- 47276 of 2007, had the opportunity to raise all the pleas which he is taking now with regard to the maintainability of the complaint against the petitioner and after arguing for sometime, the said petition was withdrawn with liberty to raise all the arguments before the trial Court at appropriate stage and therefore, the present petition is not maintainable.

After hearing learned counsel for the parties, I find that the question of jurisdiction has already been settled by Hon'ble the Supreme Court in SLP filed by the complainant vide order dated 21.08.2006 and an

opportunity was granted that the petitioner can still raise the same at appropriate stage before the trial Court. When the petitioner filed the second quashing petition, the same was dismissed as withdrawn again with liberty to raise all the arguments at appropriate stage before the trial Court. Thereafter, the petitioner has again filed an applications by way of re-agitating the same point of limitation which have been dismissed by the trial Court and therefore, I find no merit in the present petition and the same is, accordingly, dismissed.

Learned counsel for the petitioner has submitted that the petitioner is, presently aged about 65 years and submits that his personal appearance may be exempted before the trial Court. It will be open for petitioner to move an application under Section 205 Cr.P.C. and the trial Court may pass appropriate order on the same, if an undertaking is given that the evidence be recorded in his absence through his counsel and in case, the counsel do not co-operate, the trial Court may direct the petitioner to appear in person.

Liberty is granted to the petitioner to raise all the pleas taken in this petition, before the trial Court at appropriate stage. Since, the complaint is pending since the year 2001, the trial Court is directed to dispose of the same expeditiously within a period of six months from the date of receiving this order.

The parties are directed to appear before the trial Court on 30.11.2017, for further proceedings.

(ARVIND SINGH SANGWAN)
JUDGE

10.11.2017
Hemlata

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