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

**CRM-M-16003 of 2017 (O&M)**
**Date of Decision: October 23, 2017**

Dharampal ........Petitioner

Versus

Shankar Deshpuri Sabka and others .....Respondents

**CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

**Present**: Mr.C.R.Narwal,Advocate for
Mr. Pankaj Mehta, Advocate for the petitioner.

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**ARVIND SINGH SANGWAN, J.**

Prayer in this petition filed under Section 482 of the Code of Criminal Procedure, 1973 (`Cr.P.C." for short), is for setting aside the order dated 10.6.2016 passed in Criminal complaint No. 171-1 (Annexure P1), vide which the trial Court acquitted the respondents-accused as well as the order dated 6.2.2017 (Annexure P3) passed by the lower appellate Court dismissing the appeal filed by the petitioner-complainant.

Brief facts of the case are that on 18.9.1989 complainant-petitioner took a loan of ₹ 3800/- from the Haryana Gramin Bank of village Kabrel. After that on 22.12.2008, he cleared his loan account and respondent No.1-Shankar Deshpuri-accused had issued him *No Dues Certificate*. Thereafter, on 27.2.2013, when complainant-petitioner demanded *No Dues Certificate* from respondent No.3-Bimaljeet, the then

Branch Manager, he refused to issue the same as dues of ₹ 27,258/- were recoverable from him against the loan amount. While taking his NPA account statement, the complainant asked about *No Dues Certificate* of the said account, but the NPA Manager kept silent. Thereafter, the complainant moved an application dated 1.3.2013 to Police Superintendent, Adampur that accused No.3 in conspiracy with accused Nos.1 and 2 had misappropriated his money by not depositing the same in his bank account. However, the said complaint did not yield any result. Again when the complainant filed another application dated 2.4.2013 to the Superintendent of Police Hisar, the Police filed a wrong report.

Petitioner-complainant, thereafter, led his preliminary evidence and examined himself as CW1 and produced on record documents Exhibits C1 to C3 and closed the evidence. Thereafter, the trial Court, vide its judgement dated 10.6.2016, dismissed the complaint by holding that there are not sufficient grounds for proceeding further and the evidence led by the complainant do not prove the essential ingredients of the offence committed by the respondents-accused. Thereafter, the petitioner filed an appeal before the lower appellate Court. The lower appellate Court after summoning the respondents-accused passed the following order:-

> "I have given my thoughtful consideration on the arguments advanced by learned counsel for both the parties and perused the record minutely.
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> Revisionist/complainant has filed private complaint against the respondent/accused to summon and try respondents for commission of offences under section 218, 408, 420, 467, 468, 471,120-B IPC. In order to prove prima facie case against the respondents/ accused, complainant has examined only himself as CW1 wherein he has reiterated the version of his

complaint and proved complaint Ex C1 to SHO P.S Adampur, Ex C2 complaint to SP, Hisar and statement of account Ex C3 of Haryana Gramin Bank. Ex C3 shows outstanding of Rs.27,528/- in his loan account on 01.01.2013. Except his oral statement, complainant has not proved any document in order to show that he had cleared his loan account on 22.12.2008 nor any record was summoned from the bank to prove the same. Except the oral evidence of complainant, there is absolutely nothing on record to show that respondents have forged any documents in order to cheat the complainant. Besides it, complaint Ex C1 and C2 does not bear endorsement of PS Adampur or S.P, Hisar thereby acknowledging of having received the same as such he failed to prove that he gave complaint Ex C1 and Ex C2 to SHO PS Adampur and SP Hisar. Complainant has further failed to prove that on 22.12.2008 respondent no.1 and 2 were bank manager and employee of Haryana Gramin Bank respectively and respondent no. 3 is the bank manager presently. Besides it, revisionist failed to show dishonest intention on the part of respondent/accused which is essential ingredient of offences under sections 218, 408, 420, 467, 468, 471,120-B IPC. Hence evidence led by the revisionist/ complainant even if goes unrebutted then the same would not warrant the conviction of the respondents/ accused, as such the learned trial court has rightly dismissed the complaint of the revisionist/ complainant by exercising the powers under section 245 of Cr.P.C. Therefore, I do not find any illegality or infirmity in the impugned order which warrants interference by this court.

The summoning of a person in a criminal case is a serious matter and it is not be passed in a cavalier manner. However, it is mandatory for the Summoning Court to form an opinion after considering all the material available on record that there are sufficient grounds for proceeding against the accused persons before issuing summons as per requirement of the case. The Summoning Court has to scrutinize the evidence carefully. It may even by putting certain questions to the complainant and by taking into consideration the inquiry conducted by the police to find out the truth. Mere examination of a few witnesses by the complainant is not sufficient rather, order of summoning should reflect that the Summoning Court has applied its mind to the facts of the case and law applicable in the matter. Therefore, there is no substance in the contentions of learned counsel for the revisionist that preliminary evidence shows prima facie case which warrants summoning of respondent/accused since court has to consider all the material available on record to form satisfaction whether there is a sufficient material available on record to summon the accused or not and not only the witnesses examined on behalf of complainant. As discussed above the entire material available on record is not convincing and story put forward by the revisionist does not seem probable as such trial court rightly did not summon the respondents to face trial and complaint was rightly dismissed.

Hon'ble Apex Court in M/s Pepsi Foods Limited Vs Special Judicial Magistrate 1997(4) RCR (Criminal) 761 SC, has observed as under :-

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence

> brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

In another case titled as Arun Jha and another Vs State of Haryana and Another 2006(1) RCR (Criminal) 300 SC, it has been observed by Hon'ble the Apex Court that :-

> "Criminal Procedure Code, Sections 200, 204 – Summoning order in complaint case – Summoning of an accused in criminal case is a serious matter – Magistrate should not issue the process mechanically merely on the basis of some statements of the alleged witnesses – It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion – The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto- He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof – Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations, 1997(4) RCR (Crl.) 761 SC relief."

In the conspectus of legal and factual matrix as discussed above, I am of the view that complaint was rightly dismissed by the trial court. Hence, there is no illegality or infirmity in the impugned order which may warrant interference by this court. As such I hold this revision petition is devoid of any merit and accordingly, I dismiss the same. Trial court record alongwith copy of this judgment be sent back and revision file be consigned to record room after due compliance. "

It is submitted on behalf of the petitioner that the trial Court has not appreciated the allegations made in the complaint as well as the preliminary evidence led by the petitioner which prove the commission of offence. It is also submitted that the complainant, while appearing as CW1 has proved the allegation that he has given a complaint Exhibit C1 to Station House Officer, Police Station Adampur and Exhibit C2 to Superintendent of Police Hisar and the statement of account Exhibit C3 of Haryana Gramin Bank which proved that the respondents have embezzled his amount and,therefore, both the judgments passed by the Courts below are liable to be set aside.

After hearing the lerned counsel for the petitioner, I find no merit in the petition.

Petitioner has led his preliminary evidence and has examined himself as CW1. There is no corroboative evidence to prove the allegations levelled in the complaint. Petitioner has failed to examine any witness from the Haryana Gramin Bank to prove that he has cleared his loan account on 22.12.2008. Similarly, petitioner has further failed to summon the record of the Bank to prove the payment of the amount except the oral evidence or the statement of the complainant. There is nothing on record to show that the respondents have committed any forgery of douments to cheat the complainant. Even, it has not been proved by the complainant that respondent No.1 and 2 were the Bank Manager and employee of Haryana Gramin Bank on 22.12.2011 or they had acted with dishonest intention to cheat the petitioner. The trial Court, after recording the preliminary evidence,well within its power under Section 245 Cr.P.C., has dischrged respondents-accused holding that no evidence has come on record to sufficiently prove that the respondents have committed the offence as alleged in the complaint. Both the Courts below, on appreciation of the preliminary evidence, led by the petitioner have found that no *prima case* which requires further prosecution of the respondents-accused is proved on record. Therefore, I find no merit in the present petition and the same is hereby dismissed.

**(ARVIND SINGH SANGWAN)**
**JUDGE**

**October 23, 2017**
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Whether speaking/reasoned: Yes
Whether Reportable:Yes