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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1984-2013
Date of Decision :30.08.2017

Sunil Aggarwal

.....Petitioner

Versus

Ashit Chadha and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Sandeep Jain, Advocate
for the petitioner.

None for the respondents.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of the complaint bearing no.60/2 dated 15.04.2009 (Annexure P-1) as well as the summoning order dated 09.05.2009 (Annexure P-2).

Counsel for the petitioner submits that in pursuance to the notice of motion order, no one is putting appearance on behalf of the respondents and vide order dated 03.03.2014, it was noticed that despite service no one has appeared for the respondents.

Counsel for the petitioner submits that a bare perusal of the complaint (Annexure P-1), shows that the petitioner who is arrayed as an accused No.5, there is no allegation against him except that accused no.1 to 6 had promised to the complainant that they would give bank interest on the amount of cheque issued by accused no.1.

Learned counsel for the petitioner has further submitted that in fact accused no.2, 3 and 4, namely Mahesh Kumar, Gagan Kumar and Krishna Wanti, had filed CRM-M-26424-2009 and vide order dated 09.12.2011, the complainant qua these accused persons was quashed. The

operative part of the order dated 09.12.2012 is reproduced as below:-

“ As per the assertions made in the complaint (Annexure P-1), it is apparent that the cheque was drawn by Mr. Rakesh Kapoor where an amount was received by him from the complainant amounting to Rs.12,50,000/- for a plot, of which petitioners were joint owners with another person.

It is not even the case of the complainant that this amount was ever handed over to the petitioners or that they had anything to do with the issuance of the cheque by Rakesh Kapoor to the complainant. What has been mentioned in para 8 of the complaint is that accused Nos.1 to 6 also promised the complainant that they would give bank interest on the above-mentioned amount. This clearly shows that the cheque was issued by accused no.1, i.e. Rakesh Kapoor in his personal capacity and since provisions under Section 138 of the Act, 1881, create an offence qua the person who had drawn the cheque, it would be Rakesh Kapoor who would be liable for the dishonor of the cheque and not the petitioners.

In view of the above, the complaint and the summoning order qua the petitioners only deserve to be quashed.

The present petition is allowed. Complaint No.60/2 dated 15.04.2009 (Annexure P-1) and the summoning order dated 09.05.2009 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Panchkula and all consequential proceedings arising therefrom, are hereby quashed qua the petitioners only.

*Sd/(AUGUSTINE GEORGE MASIH)
Judge”*

December 09, 2011

It is further submitted that the trial court has already adjourned

the proceedings sine die as the respondent no.1 has been declared proclaimed offender vide order dated 21.02.2013 and the proceedings qua the petitioner are still alive though it is wrongly noticed in the order that the petitioner stands discharged as the same relates to accused no.6.

In view of the fact that the allegations levelled against accused no.2 to 5 are only that they had promised to pay interest to the respondent-complainant. The complaint under Section 138 of the Negotiable Instrument Act qua the petitioner is not maintainable as already held by this Court vide order dated 09.12.2012, accordingly this petition is allowed, the summoning order dated 09.05.2009 (Annexure P-2) and the complaint bearing no.60/2 dated 15.04.2009 (Annexure P-1) qua the petitioner is also quashed.

(ARVIND SINGH SANGWAN)
JUDGE

August 30, 2017

Sunil Devi

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