

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-25000 of 2015 (O&M)

Date of Decision : 04.07.2017

Dr. Barjinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bipin Ghai, Senior Advocate
with Mr. Paras Talwar, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

Mr. Sumeet Goel, Advocate
for respondent no. 2.

Surinder Gupta, J.

This petition has been filed by Dr. Barjinder Singh seeking quashing of criminal complaint no. 3970 dated 18.05.2015 (Annexure P-1) and summoning order dated 04.07.2015 (Annexure P-2) passed by Chief Judicial Magistrate, Bathinda.

2. Respondent no. 2 filed complaint under Sections 420 read with Section 120-B of India Penal Code against petitioner and Dr. Shailender Chaudhary, Director, M/s India American Cancer Centre Pvt. Ltd. As per complainant, they had given their building to run a hospital to accused (including petitioner), who had assured them payment of rent in time. A memorandum of understanding was executed between the parties on 16.02.2013 at Bathinda, which was signed by complainant, Dr. Sanjay Garg and Dr. Shailender Chaudhary on behalf of M/s India American Cancer Centre Pvt. Ltd. The rent of building was settled @ ₹1,80,000/- per month w.e.f. 01.03.2013 to 30.08.2013 with further escalation clause as

incorporated in the agreement. A sum of ₹5,40,000/- was to be paid by the accused as security, which they paid at the time of handing over possession of the building. The accused committed default in payment of rent as agreed on one pretext or the other and a sum of ₹21,60,000/- was due against them towards rent w.e.f. 01.09.2013 to 31.05.2014. With *mala fide* intention to cheat and defraud complainant and Dr. Sanjay Garg, the accused handed over two cheques bearing nos. 352496 and 352497 both dated 20.06.2014 for ₹8,10,000/- each to clear arrears of rent upto 31.05.2014. They also requested to adjust amount of ₹5,40,000/- paid as security towards arrears of rent. Cheques, when presented to bank for clearance, were dishonoured and the accused was informed. Accused allured complainant and Dr. Sanjay Garg to make the payment of arrears of rent at the earliest possible date so that proceedings under Section 138 of Negotiable Instruments Act may not be initiated against them. On their assurance, complainant and Dr. Sanjay Garg did not initiate any proceeding against accused. The accused, however, having no intention to pay and clear the outstanding dues kept on putting off the matter on one pretext or the other. Thereafter, complainant alongwith Dr. Sanjay Garg approached the accused by visiting Gian Sagar Medical College & Hospital, Rajpura, where Dr. Barjinder Singh was sitting as Director on a chair and proclaimed that they have purchased the said institute worth ₹1000/- crores and income tax case was pending regarding the said institute, due to which their accounts have been freezed and they expressed their inability to clear the outstanding dues of complainant and Dr. Sanjay Garg. However, they assured to clear the same within 2-3 months.

3. In December, 2014, accused came to Bathinda in their luxury

car and assured that they will clear the outstanding amount of complainant and Dr. Sanjay Garg and will start a unit of Gian Sagar Hospital at Bathinda. With a dishonest intention, they demanded ₹2 lacs from complainant and Dr. Sanjay Garg on the pretext of making payment of salary of staff earlier employed in their hospital as their accounts have been freezed. They also represented to complainant that they are non-resident Indian and were yet to receive payment from abroad, on receipt of which they will clear entire outstanding dues of complainant and Dr. Sanjay Garg. On persuasion of accused, complainant and Dr. Sanjay Garg paid another sum of ₹50,000/- in the presence of Sh. Ashok Kumar but later on complainant came to know that accused have not paid that amount to their staff. The accused, thereafter, issued a letter to take possession of aforesaid building on 31.03.2015, wherein they mentioned that they will clear the outstanding rent by 14.04.2015. Left with no alternative, complainant and Dr. Sanjay Garg took possession of aforesaid building on 01.04.2015 and issued a notice to accused demanding their outstanding amount, which they refused to pay.

4. Complainant alleged that the accused intentionally, knowingly, willfully and dishonestly induced complainant and Dr. Sanjay Garg to give the building in question on rent and had no intention to make payment of rent. From the very beginning their intention was to cheat and defraud complainant and Dr. Sanjay Garg. Cheques were also issued with full knowledge and intention that these will not be honoured by the bank and thereafter, by making false representation, complainant was not allowed to file complaint under Section 138 of Negotiable Instruments Act and was further by making false representation that petitioner will start a unit of

Gian Sagar Hospital in building on rent with them and defrauded the complainant by taking ₹50,000/- from them on the pretext of making payment to their staff because of freezing of their account by Income Tax authorities.

5. After recording preliminary evidence, trial Court vide order dated 04.07.2015 summoned the accused to face trial for offence punishable under Section 420 read with Section 120-B IPC.

6. Learned counsel for the petitioner has argued that deal of complainant and Dr. Sanjay Garg was with co-accused Shailender Chaudhary, who was Director of M/s India American Cancer Centre Pvt. Ltd. The petitioner was not a signatory to memorandum of understanding between the parties. Cheques issued towards payment of rent were also not signed by the petitioner, who has no role to play. Moreover, the dispute pertains to arrears of rent for which civil remedy is available to complainant.

7. Learned counsel for private respondents has argued that it is a case where the petitioner is not only connected with M/s India American Cancer Centre but he is the major shareholder of this company as is clear from the articles of association placed on file by the respondents. He is also one of the promoters of this company. He remained associated in all the deals with complainant while taking the building owned by him and Dr. Sanjay Garg on rent. It is the petitioner who made false representation to complainant and his partner so that they may not file or institute proceedings under Section 138 of Negotiable Instruments Act, when cheques issued for payment of rent were dishonoured. Thereafter on misrepresentation of petitioner and his co-accused, a sum of ₹50,000/- was paid to them for disbursement of salary to their staff as they represented that

their accounts have been freezed by the Income Tax Department. Later it was found that amount of ₹50,000/- was not used for disbursement of salary, and this amount was also obtained from complainant in order to cheat complainant. It is the intention of petitioner, which is relevant to make out the ingredients of offence punishable under Section 420 IPC and he cannot evade his liability to this effect by raising the plea that civil remedy is also available to complainant. The petitioner has not filed any revision against order dated 04.07.2015 whereby he was summoned to face trial for offences punishable under Sections 420/120-B IPC and has filed this petition seeking quashing of complaint and summoning order. Learned counsel for the petitioner submits that complaint filed against the petitioner is misuse of process of law and Court, as such, he has come up with this petition under Section 482 Cr.P.C. seeking quashing of complaint case and summoning order.

8. The question to be seen in this case is as to whether the complaint filed against petitioner is misuse of process of law and Court. On appraisal of allegations levelled in complaint, I find the answer to above query in negative. The complainant has alleged that intention of petitioner from the very beginning was to cheat and defraud him and Dr. Sanjay Garg. Though, memorandum of understanding was not signed by the petitioner still his representation at every stage was believed. Even after dishonouring of cheques, proceedings under Section 138 of Negotiable Instruments Act were not initiated on the representation of petitioner. In this manner it is *prima facie* made out that petitioner intentionally induced the complainant to do or omit to do a thing which he would not have done or omitted if he had not been so deceived. It is also alleged that on misrepresentation of

petitioner and his co-accused the complainant and Dr. Sanjay Garg were deceived to pay ₹50,000/- as they were represented that money was required by the petitioner and his co-accused to pay salary of their staff as their bank accounts have been freezed. It is not a simple case where remedy is available to complainant to file a civil suit for recovery of arrears of rent or money paid to petitioner. Trial Court has found a *prima facie* case of cheating against the petitioner. Complaint filed by the complainant is not a misuse of process of law and Court as alleged by learned counsel for the petitioner calling for quashing of the same and summoning order.

9. As a sequel of my above discussion, I find no merit in the instant petition and the same is dismissed.

July 04, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No