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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26437-2017 [O&M]

Date of Decision:- July 25, 2017

Sanjay Gambhir

....Petitioner

Versus

Parkash

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. R.S. Rai, Senior Advocate,
with Mr. Gautam Dutt, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of Complaint No. 20441 dated 13.10.2010 (Annexure P/1) titled **Parkash Vs. DD Township Limited**, filed under Section 138 of the Negotiable Instruments Act, 1881 [for short, "the Act"] and the impugned orders, dated 15.02.2011, 24.01.2012 and 02.05.2017, Annexures P/3, P/5 and P/7 respectively, passed by learned Judicial Magistrate Ist Class, Gurgaon.

2. Learned senior counsel for the petitioner mainly contended that the continuation of proceedings on the basis of summoning order dated 24.1.2012 (Annexure P/5), passed by learned Judicial Magistrate Ist Class, shall be a miscarriage of justice because, originally the complaint

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under Section 138 of the Act was filed by the petitioner against DD Township Limited through its “proprietor/authroized signatory Shri Sanjay Gambhir”. Different cheques, Annexures P/2 (Colly.) were issued by the said company and the same were signed by the authorized signatory on behalf of Company only. More so, an application (Annexure P/6) was filed on 1.4.2017 by the Company for substitution/change of Authorized Representative of the accused company and that was dismissed vide order dated 2.5.2017 (Annexure P/7) without any legal ground and appreciation of facts. In support of this, reliance has been placed on a decision of this Court in **Dow Agro Science India Pvt. Ltd. Vs. Central Bureau of Investigation**, 2013 SCC OnLine P&H 16323 (decided on 19.08.2013). Contention was also raised that the summoning order was qua D.D.Township Limited, but notice of accusation dated 15.02.2011 (Annexure P/3) was served only against Sanjay son of Sh. Surender Kumar and not against the said Company, but the Court below is proceeding with the trial on the basis of these facts and same are liable to be quashed.

3. Having considered the submissions made by learned senior counsel for the petitioner, this Court is of the considered view that the orders under challenge were passed by learned Judicial Magistrate. The said orders can be challenged before the Court of Sessions as per provisions of Section 397 Cr.P.C. For facility of reference, Section 397 Cr.P.C., is extracted below:-

“397. Calling for records to exercise powers of revision. [\(1\)](#)

The High Court or any Sessions Judge may call for and examine the

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record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

[\(2\)](#) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

[\(3\)](#) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

4. The above quoted provisions give power to move before the Court of Sessions as well for challenging the orders by way of revision.

5. Section 482 Cr.P.C. deals with inherent powers of this Court. It is well-established principle of law that inherent powers conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too, to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are initiated illegally, vexatiously or without jurisdiction and where the allegations, even

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if they they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused. The content and scope of power under Section 482 Cr. P.C. were examined in considerable details by Hon`ble Apex Court in Madhu Limaye v. State of Maharashtra, 1978 AIR (SC) 47, and it was held as under:

“The following principles may be stated in relation to the exercise of the inherent power of the High Court:-

- (1) **that the power is not to be restored if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;**
- (2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;
- (3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

6. The main prayer of the petitioner in the present petition is to quash the impugned orders, Annexures P/3, P/5 and P/7 passed by learned Judicial Magistrate. Apparently, the petitioner has an alternative remedy of filing revision against the said orders before the Court of Sessions.

7. In view the above, the present petition under Section 482 Cr.P.C. is not maintainable and is dismissed as such. However, the petitioner shall be at liberty to avail alternative remedy as available under the law.

July 25, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned
Reportable

Yes/No
Yes/No