IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-27744 of 2014 (O&M)
Date of Decision: February 07, 2017

Sandeep Duggal

...Petitioner

VERSUS

Ajay Wadhawa

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaibhav Narang, Advocate
for the petitioner.

Mr.Vivek Salathia, Advocate
for the respondent.

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INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 12.07.2013 passed by learned JMIC, Amritsar whereby criminal complaint No.RBT CR. Case No.149 of 2008 dated 05.06.2008/14.06.2012 filed under Sections 420, 465, 467, 468 and 471 IPC has been dismissed without even summoning the accused and also the judgment dated 21.04.2014 passed by learned Addl. Sessions Judge, Amritsar, vide which the revision filed by the petitioner was also dismissed.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Sandeep Duggal filed a complaint against Ajay Wadhwa under Sections 420, 465, 467, 468 and 471 IPC. The averments of the complaint as noted down in the order passed by learned JMIC, Amritsar, are as under:-

> *"2. In brief, the case of the complainant is that complainant Sandeep Duggal is filing the present complaint for himself as well as being attorney of Shri Sudhir Duggal son of Shri Krishan Baldev Duggal, who happens to be his real brother and at present residing in USA. It is averred that accused has attempted to cheat and play fraud with the present complainant and his brother namely Shri Sudhir Duggal, therefore, the complainant is preferring the present complaint against accused for the offences committed by him to the complainant and his brother Sudhir Duggal. It is averred that originally a joint partnership business concern under the name and style of M/s Krishan Baldev Kahan Chand was in operation on the basis of partnership deed dated 24.11.1992 and the present complainant along with his brother namely Sudhir Duggal and other partners were carrying out the above referred business concern. It is further averred that subsequently the partners of the aforesaid concern had decided to change the name of partnership business concern to M/s Krishan Baldev & Co., functioning at Majith Mandi w.e.f. 01.04.1994 and a fresh partnership deed was arrived at in between the partners of the aforesaid concern which included the present complainant and his brother namely Sudhir Duggal and which partnership concern under the new name started functioning w.e.f. 01.04.1994. It is further averred that Sudhir Duggal who was one of the partners of the business concern original name of which was M/s Krishan Baldev Kahan Chand and its new was M/s Krishan Baldev & Co., was remaining busy in connection with his business activities. However, prior to that aforesaid partnership business was dissolved w.e.f. 14.07.2005 and thereafter the business concern no longer remained a partnership business and the present complainant was even not left as a partners of the business concern in question and w.e.f. 14.07.2005 the aforesaid business concern became proprietorship concern and information in this regard was also given to the banker and even the joint account of partnership concern running in the bank i.e. Oriental Bank of Commerce, Branch Majith Mandi was also closed. It is further averred that when the brother of the complainant became the proprietor of the business concern, he in good faith had appointed the accused as attorney by the means of a power of attorney of dated 19.04.2006 duly executed in his favour and the accused was authorized to take care of the business concern of the brother of the complainant which became the*

proprietorship concern w.e.f. 14.07.2005. However, at the relevant time when the accused was appointed as attorney various cheques were given to him by the brother of the complainant as the accused was deputed to look after the business of the brother of complainant namely Sudhir Duggal and subsequently, the intentions of the accused became malafide and he started acting contrary and adverse to the interest of Sudhir Duggal, on account of which power of attorney granted to him was revoked by Sudhir Duggal by the means of revocation of power of attorney dated 12.10.2006 and information in this regard was duly conveyed to the accused that he is no longer the attorney of the present complainant and he was called upon to return all the bank cheques lying with him. It is further averred that the brother of the complainant had to shift to America and now for the last more than 1½ years the brother of the complainant is residing in America and he has not visited India. It is further averred that neither the business concern nor the brother of the complainant and even complainant never owned any money to the accused and before shifting America, brother of the complainant had settled down all the accounts once for all. It is further averred that despite of the fact that neither the business concern nor the complainant who is brother of Sudhir Duggal ever owed anything to the accused and the business concern M/s Krishan Baldev & Co., stands closed for the past many years and the accounts have already been closed and the business is not in operation, yet the accused with fraudulent mind and in order to cheat the complainant and his brother has committed forgery to some of the cheques belonging to the brother of the complainant allegedly in the name of business concern which is not in operation and which account has been closed for a long time and the accused by using wrongful means and by making fabrication of cheque bearing No.851893 and 851895 of the Oriental Bank of Commerce, branch Majith mandi, and by filling the amount as per his own choice and without any necessity to the tune of Rs.50/- lacs and Rs.25/- lacs had presented the aforesaid cheques for their encashment without any necessity. It is further averred that the information regarding the forgery being committed by the accused came to the notice of the complainant and he had sent legal notice of dated 23.04.2008 through registered AD as well as through UPC to the accused thereby calling upon him as to why he has committed the acts of forgery and cheating with the complainant, his brother and business concern and he was called upon to tender unconstitutional apology within the notice period but the accused has not bothered to realize his guilt, rather he is bent upon to cheat the complainant, his brother and other relations including the business concern by committing fabrication and forgery of the cheques, above referred. It is further averred that brother of the complainant had never issued the cheque in question and even on the

> *stipulated dates of the cheques the brother of the complainant was in America and as such, there was no reasons for him to have ever issued the cheques in question. It is further averred that since the accused was originally appointed as attorney, therefore, he remained attorney of brother of complainant which although was revoked subsequently, had attempted to cheat the complainant and his brother and business concern by committing the above said wrongful acts the accused has rendered himself liable to face prosecution in accordance with the provisions of law. It is further averred that complainant reported the matter to the police but of no avail. Hence, the present complaint."*

In the preliminary evidence, the complainant examined CW-1 Ram Pal, Record Keeper, CW-3 Vinod Kumar, Clerk, CW-4 Raman Kumar, Special Assistant of OBC, CW-4 Jaspal Singh, Junior Assistant and complainant stepped into witness box himself as CW-2.

Learned JMIC, Amritsar, after appreciating the evidence, dismissed the complaint. A revision was filed by the petitioner and learned Addl. Sessions Judge, Amritsar, also dismissed the same vide judgment dated 21.04.2014.

Aggrieved from the above said order and judgment, present petition has been filed.

From the perusal of the judgments passed by the Courts below, I find that the findings given by both the Courts below are correct, as per evidence and law. The complaint under Section 138 of the Negotiable Instruments Act has already been decided by learned JMIC and as argued, present complainant has been convicted in that case by the Magistrate. In the present complaint, the version of the complainant is that the cheques in question, are the result of fraud and forgery and have been misused by the respondent.

Learned Magistrate has discussed this issue and held that the present complaint is with respect to the cheques bearing No.851893 and 851895 allegedly issued by the brother of the complainant regarding which a complaint under Section 138 of the Negotiable Instruments Act against the complainant of the present case is pending for dishonourment of aforesaid cheques, which, now has stated to be decided and resulted into conviction of the present complainant.

It is also observed by learned Magistrate that there is presumption that cheques have been given in discharge of existing legal liability for valuable consideration. The Court held that the fact that whether cheques are forged and fabricated, is matter of scrutiny, to be considered and decided by learned Magistrate in the complaint under Section 138 of the Negotiable Instruments Act. The Court further held that the property remedy with the complainant is to defend himself in those proceedings.

These findings, in no way, can be held as illegal or against the evidence. As admitted at the time of arguments, the complaint under Section 138 of the Negotiable Instruments Act resulted in the conviction of the complainant, therefore, it means that in that case, the Court did not believe the version of the complainant-petitioner that the cheques in question are result of fraud and forgery etc.

In view of the above discussion, I find that no illegality has been committed by both the Courts below while passing the impugned order and judgment. The order dated 12.07.2013 passed by learned JMIC, Amritsar and the judgment dated 21.04.2014 passed by learned Addl. Sessions Judge, Amritsar, are correct, as per law and evidence and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

February 07, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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