

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M No.28881 of 2016
Date of decision : 10.03.2017

Shiv Kumar

... Petitioner

versus

Madan Lal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: None.

AMOL RATTAN SINGH, J.

By this petition, complaint no.1482 of 2012 filed by the respondent herein, against the present petitioner and the firm of which he is the proprietor, i.e. M/s Krishna Textiles, is sought to be quashed. The complaint filed by respondent Madan Lal has been filed making out an offence punishable under Section 138 of the Negotiable Instruments Act, read with Section 142 thereof. This petition is seen to be dated 20.05.2016, filed on 01.06.2016 and re-filed on 17.08.2016, some objections having been raised by the Registry of this Court, upon the initial filing.

2. It first came up for hearing before a co-ordinate Bench on 24.08.2016, when, on none appearing for the petitioner, it was adjourned to 05.09.2016. On that date, Mr. H.S.Gill appeared for the petitioner and requested for an adjournment, upon which the matter was adjourned to 13.01.2017. On that date, as recorded in the order, the matter having been called out twice and none having appeared again for the petitioner, it was adjourned to 30.01.2017. Again, none having appeared on 30.01.2017, it was adjourned to 06.02.2017, on which date, in the same circumstances, it was

adjourned to 06.03.2017.

On 06.03.2017, it was again recorded that on second call also none had put in appearance and it was adjourned to 08.03.2017. On that date, i.e. 08.03.2017, it was recorded in the order that the case had been listed for 5th time with none appearing again for the petitioner. (Otherwise, actually it was listed for the 7th time but the counsel for the petitioner having appeared on 05.09.2016, thereafter, had not appeared for the 5th time in succession). The petition was therefore adjourned to today, i.e. 10.03.2017, for the last time, it being recorded so in the order.

Today again none has appeared for the petitioner and hence, it has been taken up for consideration even in the absence of counsel.

3. As per the petition, which invokes jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, it is stated that a wholly false complaint has been registered by the respondent on 21.12.2012, bearing no.1482, before the learned Judicial Magistrate Ist Class, Panipat, which is a gross abuse of the process of law, only to put the petitioner to undue harassment.

The judgment of the hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** 1992 Supp. (1) SCC 335 has been cited in the petition, to submit that where false allegations are made, an FIR or a complaint can be quashed by a High Court, exercising jurisdiction under Section 482 of the Cr.P.C.

It has further been stated in the petition that the order summoning the petitioner as an accused is also wholly illegal and arbitrary and an abuse of the process of law, and that the respondent-complainant has done so in collusion and in connivance with about 5 people, i.e. "Brij Sharma, Naval

Kishore, Parmod Kumar, Tilak Bajaj, Satish Bajaj etc.” (who are named in para 6 of the petition), two of them being the complainants' brothers. The others are stated to be close business associates and family friends of the complainant and his brothers.

As per the petitioner, the complaint has been filed only to settle scores arising out of business rivalry and further, that the cheques of the petitioner and his family have been stolen and misused.

4. It has further been stated that in order to make the petitioner succumb to the demands of the complainant and his companions, FIR No.605/12 was also got registered at Police Station Gharounda, District Karnal, alleging therein the commission of offences punishable under Sections 420/406 and 120-B of the IPC and Section 24 of the Immigration Act, 1971. A copy of the complaint addressed to the SP, Karnal, written by Naval Kishore (one of the persons named as an associate of the respondent-complainant), on which the FIR is stated to be based, has also been annexed as Annexure P-2 with the present petition.

Yet further, it has been contended that the aforementioned Brij Sharma, has had business dealings with the petitioner since 2010 and that the complainants' brother also has such business dealings, and that Satish Bajaj had become a false witness in the complaint leading to the lodging of FIR No.605/12.

5. The petitioner has also stated in this petition that another complaint under Section 138 of the Negotiable Instruments Act has also been filed on false and frivolous grounds, to settle personal scores with the petitioner, a copy of which has been annexed as Annexure P-4 with the petition. However, no number of the complaint is seen to be given either in the

main body of the petition, nor on Annexure P-4. Yet another complaint is also stated to have been filed under the same provision, through the brother-in-law of the present respondent-complainant, i.e. one Ramesh Kumar, in the Court of the learned Judicial Magistrate Ist Class, Panipat.

It has been reiterated that all the complaints filed are because of cheques of the petitioner having been misused, after they were stolen from his house and factory.

On the aforesaid contentions, complaint no.1482/12 (Annexure P-1) is sought to be quashed, alongwith all proceedings arising therefrom.

6. Thus, other than making general allegations that the complaint in question, i.e. bearing no.1482/12, and other complaints, have been filed only to settle scores with the petitioner and upon his cheques having been stolen, nothing substantial has been either averred in the petition, or argued before this Court, with counsel for the petitioner never having appeared at any stage except for one date, when he is seen to have sought an adjournment.

7. A perusal of the impugned complaint shows that the complainant has contended that the petitioner was a regular visitor to the shop of the complainants' brother, who was the proprietor of M/s Shiv Electric Company, Panipat. It is further alleged that the complainant used to sit alongwith his brother and further contended that on account of these visits, the complainant also developed a good relationship with the petitioner, and in the first week of June 2012, the petitioner stated that he was in dire need of Rs.5,00,000/- and upon his making a request, the complainant agreed to give him the aforesaid amount, which was so given on 15.06.2012 in the presence of one Jagan Nath son of Munshi Ram. The amount was to be paid back within a period of 10 days (as contended) and towards discharging that liability the petitioner

allegedly issued a cheque of Rs.5,00,000/-, bearing no.429577 dated 18.08.2012, drawn on the Punjab National Bank, Jattal Road, Panipat, and gave it to the complainant on 01.07.2012.

It is further alleged in the complaint that on 11.07.2012, the petitioner came to the respondent herein (complainant) and requested him not to present the cheque on 12.07.2012, as he was not in a position to arrange the amount and therefore, requested him to present the cheque only in the 2nd week of October 2012.

The complainant, as contended in the complaint, accordingly presented the cheque on 10.10.2012, which was dishonoured on account of insufficiency of funds. An intimation to that effect was stated to have been received on the same date by the complainant, from the bank.

8. A legal notice is stated to have been issued by the complainant on 08.11.2012 by way of registered post to the petitioner, bringing to his knowledge the fact that the cheque had been dishonoured, and requested him to make the payment within 15 days from the date of receipt of the notice. The needful not having been done, the complaint came to be filed. (The date of the complaint is seen to be 21.12.2012 on the copy thereof annexed with this petition).

9. Lastly it has been contended in the complaint, that the cause of action arose on 12.07.2012 with the dishonouring of the cheque and on 08.11.2012 when the legal notice was issued, and lastly on 25.11.2012, by which date the payment was not made by the present petitioner, after the cheque was dishonoured.

10. Having considered the pleadings before this Court, to repeat, with no firm reasoning given before this Court either in the pleadings or by way of

any argument, as to how the averments in the complaint are false, due to which the extreme action of quashing the complaint at the initial stage itself should be resorted to by this Court, I see no reason whatsoever to entertain this petition, which has never been argued on merits.

12. Consequently, without making any comment on the merits of the complaint, or the defence taken or to be taken by the present petitioner before the trial Court, this petition is dismissed.

(AMOL RATTAN SINGH)
JUDGE

March 10, 2017.
dinesh

Whether speaking / reasoned	Yes
Whether reportable	No