

CRM-M-6277-2015 (O&M)
Reserved on: 09th October 2017
Pronounced on:-26th October, 2017

versus

and

versus

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Ms. Ravinder Kaur Manaise, Advocate, for the petitioner
(in CRM-M-2957-2015) and
for the respondent (in CRM-M-6277-2015).

RAMENDRA JAIN, J

1 By this common judgment, I shall dispose of the two above
noted CRM-M No.6277 of 2015 and CRM-M No.2957 of 2015 as the
mixed questions of fact and law are involved therein. However, for the sake
of convenience, facts are being extracted from CRM-M-6277-2015 titled

Sardool Singh and another versus Briz Mohan Aggarwal.

2 Through this instant petition under section 482 of the Code of Criminal Procedure, the petitioner has prayed for quashing complaint case no.36 dated 09.2.2012 titled “**Briz Mohan Aggarwal** versus **Varinder Verma and others** (Annexure P-9) along with all consequential proceedings emanating therefrom. A prayer has also been made for setting aside the impugned order dated 05.11.2014 (Annexure P-10) summoning the petitioners for the offence under sections 420/465/467/468/471 and 120-B IPC, claiming it to be a gross abuse of the process of law.

3 The adumbrated facts necessary for the disposal of the instant petition are that earlier to the filing of the instant petition, petitioner no.1 had instituted a criminal complaint under section 138 of the Negotiable Instruments Act, 1881 (for short “the Act”) titled “**Sardool Singh** versus **M/s Shiva Computers etc.**” against respondent Brij Mohan Aggarwal before the Ilaqa Magistrate, Batala, on account of dishonour of a cheque bearing no.19177 dated 31.03.2008 for an amount of Rs.7,00,000/- issued by the respondent in favour of petitioner no.1. Vide order dated 13.9.2008 (Annexure P-6) of the trial Magistrate, the respondent was summoned in the said complaint.

4. After closure of the evidence by the petitioner Sardool Singh, the statement of the respondent under section 313, Code of Criminal Procedure, was recorded. The respondent, even after spanning over a period of two years, did not lead any evidence in his defence. Resultantly, the trial court, vide order dated 19.1.2015, closed the defence evidence of the respondent.

5. The respondent, as a counterblast to the aforementioned

complaint of petitioner no.1, filed complaint dated 17.3.2009 (Annexure P-7), under sections 420/467/468/469/471 and 120-B IPC levelling allegations that the cheque, which petitioner no.1 alleges that it was dishonoured, on its presentation, was forged by him, thereby, he committed an offence of cheating and forgery. It is worth mentioning that except for examining two witnesses in the said complaint, the respondent did not examine any other witness in his preliminary evidence and kept the matter pending for two years for recording his evidence. The trial court, ultimately, vide order dated 28.11.2011 (Annexure P-8) dismissed the complaint in default for want of prosecution.

6. The respondent, on similar accusation, filed a fresh complaint dated 9.2.2012 (Annexure P-9) against petitioner no.1 under sections 420/467/468/469/471 and 120-B IPC before the Judicial Magistrate, 1st Class, Batala, without disclosing the earlier complaint filed by him. The trial court, vide order dated 5.11.2014 (Annexure P-10) summoned the accused, namely, Varinder Verma @ Babbu Barket, Sardool Singh and Parbodh Chander for the offence under sections 420/465/467/468 and 471 read with section 120-B IPC. The petitioners have prayed for dismissal of this subsequent complaint of the respondent and the summoning order.

7. Learned counsel for the petitioners contends that the impugned complaint dated 9.2.2012 (Annexure P-9) filed by respondent Brij Mohan Aggarwal is a counter-blast to the complaint case under section 138 of the Act filed against him by petitioner no.1. This complaint has been filed more than one year after dismissal of the first complaint in default on 28.11.2011 (Annexure P-8). A second complaint on the same set of facts and similar accusations is not maintainable before the Magistrate if the

earlier complaint was dismissed in default for want of prosecution.

8. On the other hand, learned counsel for the respondent refuting the above submissions of learned counsel for the petitioners contends that second complaint is very much maintainable, if earlier complaint has been dismissed in default not on merit. In support of his arguments, learned counsel for the respondent has placed reliance upon the decisions in Parmatha Nath Talukdar versus Saroj Ranjan Sarkar 1962 AIR (SC) 876; Ranvir Singh versus State of Haryana and another, 2009 (4) RCR (Criminal) 305; Shiv Shankar Singh versus State of Bihar and another 2012 (1) SCC 130; Makhan Singh and others versus Davinder Singh 2006(1) Cri.CC 457; Jatinder Singh versus Ranjit Kaur 2001 AIR (SC) 784 and Poonam Chand Jain and another versus Fazru 2010(1) R.C.R.(Criminal) 801 and Om Parkash versus M/s Golden Forest India Limited 2008(4) RCR (Criminal) 445.

9. Having given thoughtful consideration to the submissions made by learned counsel for the parties, this court is of the opinion that CRM-M 2957 of 2015 filed by Brij Mohan Aggarwal, being without any merit, is liable to be dismissed, whereas CRM-M-6277-2015 filed by Sardool Singh and another, must succeed for the reasons to follow:-

10. A perusal of the record reveals that the controversy, in both these petitions, revolves around a cheque in question bearing no.19177 dated 31.03.2008, for a sum of Rs.7,00,000/- duly signed by respondent Brij Mohan, without being name and date.

11. On 22.5.2008 petitioner no.1- Sardool Singh presented the said cheque with the bank for encashment, which, vide memo dated 28.5.2008, was received back with the remarks “insufficient funds”. A legal notice

(Annexure P-4) was served upon the respondent for payment of the amount due towards him. The respondent did not pay the amount within the stipulated period of 15 days from the date of its receipt. Hence, Petitioner no.1 Sardool Singh constrained to file a complaint bearing no.250 dated 26.07.2008 titled "**Sardool Singh versus Shiva Computers and Tele services and another**" under Section 138 of the Act. Vide order dated 13.09.2008, (Annexure P-6) passed by the trial Magistrate, respondent Brij Mohan Aggarwal was summoned. He was served through non-bailable warrants.

12. Being aggrieved, respondent Brij Mohan Aggarwal, as a counter-blast, filed a complaint bearing no.36 dated 09.02.2012 under sections 420/467/468/469/471 and 120-B IPC against Varinder Verma @ Babbu Barket, Sardool Singh Parbodh Chander with the allegations that on 06.12.2007, he along with his partner Joginder Singh went to the shop of petitioner no.2, namely, Varinder Verma @ Babbu Barket, dealing in business of sale and purchase of the property, who asked Brij Mohan Aggarwal, if he was interested in purchasing some property in Batala, then he must carry a cheque of minimum Rs.7 to 8 lac without any name and date in his pocket. However, the said cheque had lost in the shop of Varinder Verma @ Babbu Barket. Despite best efforts, the said cheque could not be traced. Thereafter, vide application dated 07.12.2007, an intimation with respect to lost cheque was given to the Allahabad Bank, G.T. Road, Batala and requested it to stop the payment against the said cheque in case it was presented for encashment. Vide order dated 05.11.2014, (Annexure P-10) the three accused including the petitioners were summoned for the offence punishable under sections 420/465/467/468/471 and 120-B IPC, which is

pending for appearance of the accused persons for 27.2.2015.

13. It is not disputed that earlier on 17.3.2009, a similar complaint under section 420 IPC was filed by respondent Brij Mohan Aggarwal against the three accused persons, but it was dismissed in default at the stage of preliminary evidence on 28.11.2011 (Annexure P-8). Thereafter, he filed a fresh complaint which is pending adjudication before the trial Magistrate.

14 A plethora of authorities have been produced by the learned counsel for the respondent on the point that there would be no bar to file a second complaint before the Magistrate provided new facts are brought on the record. A perusal of the earlier complaint filed by petitioner Brij Mohan Aggarwal in the year 2009 and the second complaint filed by him in the year 2015 clearly shows that the averments made therein are the same and identical in nature. A reference is being made to a decision rendered by the Hon'ble Supreme Court in **Pramatha Nath Talukdar's case** (supra), wherein their Lordships of the Hon'ble Supreme Court in para 48 of the judgment, a relevant extract of which, reads as follows:-

“..... An order of dismissal under section 203, Criminal Procedure Code , is, however, no bar to the entertainment of a second complaint on the same facts, but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced.....”

15 Similar views have also been expressed in various judicial pronouncements in **Poonam Chand Jain and another; Shiv Shankar Singh Jatinder Singh, Makhan Singh and others, Ranvir Singh and Om Parkash cases** (supra), wherein it has been held that there is no bar to file a second complaint on the same facts provided the earlier complaint was decided on the basis of insufficient material or the complete facts were not brought before the court. In the case in hand, the complaint filed by complainant Brij Mohan Aggarwal remained pending for almost two years for recording his evidence, wherein except for getting the two witnesses recorded, he could not be able to produce the entire evidence in support of his case and ultimately, after availing six opportunities by petitioner Brij Mohan Aggarwal, vide order dated 28.11.2011 (Annexure P-8), the complaint was dismissed in default for want of prosecution. The complaint was not decided on merits. In the second complaint, the reason for dismissal of the earlier complaint assigned was that the complainant inadvertently noted wrong date as 10.12.2011. The complainant, in order to show his bona fides, did not make any endeavour to file an application before the trial Magistrate for restoration of the complaint.

16 With due deference to the ratio of law laid down in the afore-referred authorities cited by the learned counsel for the respondent, this court is of the view that there are no quarrels with respect to the propositions of law laid down therein, but at the same time, in the given facts and circumstances of the case in hand, these authorities, do not render any assistance to the respondent. Resultantly, this court does not find any hesitation in holding that the second complaint filed by complainant Brij Mohan Aggarwal is not maintainable as no new facts have been brought on

the record.

17 Against the order of dismissal of the complaint in default, the petitioner did not file any appeal/revision before the appellate/revisional court. Instead, he chose to file a second complaint without being brought new facts on the record. It is worth mentioning that Sardool Singh filed a complaint under section 138 of the Act against the respondent Brij Mohan in the year 2008. After the closure of evidence in the year 2013, the statement of the respondent under section 313 Cr.P.C was recorded. After spanning over a period of two years, the respondent did not produce even a single witness in his defence. Thus, the conduct of the respondent Brij Mohan can be gauged from this fact that he adopted a dilatory tactics, so that it could be lingered on for the reasons best known to him. Otherwise, it would have been the best opportunity for the respondent to raise his pleas in defence and could have proved them by adducing cogent or convincing evidence in support of his claim, but he opted not to do so. Surprisingly enough, he even did not examine his alleged partner Joginder Singh with whom he allegedly went to the shop of Varinder Verma @ Babbu Barket in defence.

18. The averments in the complaint filed by petitioner Brij Mohan Aggarwal that undated cheque in question for such a huge amount of Rs.7 lac duly signed by him had lost in the shop of Varinder Verma @ Babbu Barket is not worth reliance, especially when the petitioner did not bother to lodge any complaint or DDR with the police or higher authorities. Even otherwise, it is not expected of a prudent man, like the petitioner, who is a business man, would keep a blank cheque duly signed by him without writing name and date therein and will go with his partner Joginder Singh

to the shop of the aforesaid person and thus, can be termed as unbelievable in the absence of averments in the complaint as to for how much amount, in what year and for what purpose, the amount was borrowed by Brij Mohan Aggarwal from Sardool Singh. On going through the complaint, this court does not find even a single word as to when and for what kind of business, the amount was taken by the respondent Brij Mohan Aggarwal. What to talk of Shri Brij Mohan Aggarwal, even the stand of petitioner no. 1 Sardool Singh is vague by not averring the monetary transaction in clear terms between the two. Even there is no mention in the complaint that any document in writing was executed between the parties with respect to the amount of Rs. 7 lac, allegedly, borrowed by Brij Mohan Aggarwal.

19. Whether or not the cheque in question was lost in the shop of Varinder Verma @ Babbu Barket, or whether or not, for what purpose the amount in question was borrowed by Briz Mohan Aggarwal from Sardool Singh-petitioner no.1, or whether or not, it was the same cheque which was, allegedly, without name and date or must have filled up later on with the same or different ink or with the same handwriting or different one and by whom, is the matter of evidence, which would be determined in the complaint case pending adjudication before the trial magistrate.

20. In view of the foregoing reasons, this court is of the view that CRM-M-2957-2015 filed by the petitioner Briz Mohan Aggarwal, being without any merit, fails and is dismissed, whereas CRM-M-6277-2015 filed by petitioners Sardool Singh and another is allowed. Consequently, complaint case no.36 dated 09.02.2012 titled "Briz Mohan Aggarwal versus Varinder Verma and others" (Annexure P-9) and order dated

05.11.2014 (Annexure P-10) passed by the trial court summoning the petitioners for the offence under sections 420/465/467/468/471 and 120-B IPC are quashed.

21 The trial Magistrate shall decide the complaint case filed by complainant Sardool Singh against Shiva Computers & Tele Services, G.T.Road, opposite Railway Road, Batala and another pending adjudication before it at the earliest possible time.

26th October, 2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether Reportable: | Yes/No |