

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.1136 of 2017(O&M)
Date of Decision: 28.03.2017**

Yashpal Rana

.....Petitioner

Versus

M/s Excellent Services and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Rakesh Gupta, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 09.02.2017 passed by Judicial Magistrate First Class, Gurgaon vide which the application filed by the petitioner under Section 319 Cr.P.C for summoning Mrs. Geeta Dahiya and Rampal Dahiya was dismissed.

[2]. Petitioner has alleged that in the month of May, 2015 respondents approached him and demanded an amount of Rs.2,40,000/-. The amount was paid and the same was to be returned shortly. The cheque No.547432 dated 19.01.2015 in a sum of Rs.2,40,000/- was issued in favour of the complainant which was to be drawn on Yes Bank, Dundaheda, Gurgaon. The cheque was presented which was dishonoured and in the aforesaid context, after issuance of legal notice dated 27.01.2015, the complaint under Section 138 of the Negotiable Instruments Act came to be filed.

[3]. At the time of cross examination of DW 1-Mr. Amit Mittal, Branch Manager, Yes Bank, Dundahera, Gurgaon, it was pointed out by the witness that Mrs. Geeta Dahiya wife of Rampal Dahiya and Rampal Dahiya are also the authorized signatories of M/s Excellent Services/accused No.1. The factum of aforesaid persons being authorized signatories never came to the knowledge of the complainant. The complainant filed the application under Section 319 Cr.P.C for summoning the aforesaid persons as additional accused to face trial.

[4]. The application was contested on the ground that the persons sought to be summoned never signed the cheque in question. Mrs. Geeta Dahiya has already expired on 09.01.2016. Under Section 319 Cr.P.C, there should be a reasonable evidence for ultimate conviction and the material required for such opinion should be *prima facie* more than required for framing of charge and just short of ultimate conviction.

[5]. Since the persons sought to be summoned never signed the cheque in question, the pleadings qua them being responsible persons of respondent No.1 are also missing in the complaint, nor there was any process issued in terms of legal notice to them before filing of the complaint. Merely because Mrs. Geeta Dahiya and Rampal Dahiya were the authorized

signatories of accused No.1, they cannot be summoned, for want of pleadings and material on record. The material on record is not more than sufficient for framing of charges against them and there is nothing on record to presume that even if the said material remains unrebutted, would ultimately result in conviction of the persons.

[6]. Looking to the entire facts and circumstances, I do not deem it appropriate to interfere in the impugned order dated 09.02.2017 passed by Judicial Magistrate First Class, Gurgaon.

[7]. Dismissed.

28.03.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No