

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

**CRM-M-10627-2015
Date of decision: 11.09.2018**

Manoj Kumar

...Petitioner

Versus

M/s Singh Finance Corporation

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Ashish Bansal, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of the Criminal Complaint Case No. 32040/2013 instituted on 24.01.2013 titled as ***M/s Singh Finance Corporation vs. Manoj Kumar*** under Sections 406 and 420 of the Indian Penal Code (*for short 'IPC'*) (Annexure P-3) and all subsequent proceeding arising therefrom including summoning order dated 15.07.2014 (Annexure P-4), passed by the trial Court, vide which, the petitioner has been summoned to face trial under Section 420 of the IPC.

This petition is pending since 2015 and while issuing notice of motion, further proceedings before the trial Court were stayed. However, noticing the fact that no one is appearing on behalf of the petitioner and the respondent, the interim order was vacated on 21.05.2018.

Learned counsel for the petitioner has argued that on the same set of allegations, prior to filing of the impugned complaint, respondent-

complainant M/s Singh Finance Corporation through its partner Pritpal Singh had filed a complaint under Section 138 of the Negotiable Instruments Act (*for short 'N.I. Act'*) on account of dishonouring of a cheque of ₹31,240/-. The petitioner-accused appeared in the said complaint and contested the same and the Judicial Magistrate First Class, Jalandhar, vide order dated 20.01.2014, acquitted the petitioner by passing the following order:

“14. A careful perusal of the case file transpires that the loan has not been denied by the accused and the accused has also not denied his signatures on the cheque in question. However, he has stated that he made the payment of the entire loan amount to the employee of the complainant vide receipt Ex. D-1. Now for the offence under Section 138 of NI Act the complainant has to prove that he or she gave any amount to the accused and the accused issued a cheque in discharge of his or her legal liability and the same has been returned back by the bank due to the reason given in the bank memo and thereafter a legal notice within the stipulated period of thirty days from the receiving information from the bank has to be issued to the accused and if the accused failed to pay the amount within the period of fifteen days after receiving the legal notice then the complainant can file the complaint under Section 138 of NI Act within the period of one month from the lapse of fifteen days granted to the accused for making the payment. In the present case, the loan is admitted, issuance of cheque is also admitted, bank memo and legal notice have been proved by the complainant and now the burden shifted upon the accused to prove that there was no legally enforceable liability against him at the the time of issuance of the cheque in question and a careful

perusal of the evidence led by the accused i.e. the receipt Ex. D-1 clearly shows that there was no legally enforceable liability of the accused at the time of issuance of the cheque in question. The complainant in his cross examination has admitted that said Harjit Singh was working as an employee with his firm and he was authorised to collect the installments from the persons to whom the complainant firm has granted the loan and to issue the receipt regarding the same and in the present case also the complainant has identified the signatures of Harjit Singh on Ex. D-1 and further he has admitted that the letter head on which the said receipt has been issued is that of complainant firm. However, the learned counsel for complainant has argued that at the time of issuance of the said receipt, Harjit Singh was not employee with the firm. But, no record regarding the same has been produced on record by the complainant to show that on 25.06.2006 i.e. the date of receipt Ex. D-1 Harjit Singh was not employee with his firm. 15. Further as regards the arguments addressed by the learned counsel for complainant that Harjit Singh has stolen the letterhead of complainant firm, in this regard no complaint has been produced on record by the complainant regarding the theft of its letterhead. So, this arguments does not hold good. 16. Further as regards the arguments of learned counsel for complainant that said Harjit Singh was authorised only to collect the installments from the customers and not to give receipt in full and final payment. In this regard, it is pertinent to mention here that when a company employs a person for collecting installments on its behalf, a presumption is attached with that

person that he is also authorised to issue receipts in full and final settlement, whether he was not authorised for the same can be personally known to the complainant itself, but it might not be known to the accused and a careful perusal of the receipt Ex. D-1 shows that while issuing the receipt Ex. D-1 the said Harjit Singh in the last line has categorically stated that no other payment remains due against accused Manoj Kumar and the complainant has nowhere alleged that after the said payment by the accused any fresh loan has been given by it to the accused for which the cheque in question has been issued by the accused and this fact also strengthens the stand taken by the accused that the cheque in question was given as a security to the loan taken in the year 2001 and the same has been misused by the complainant, as there was no legal liability of the accused on the alleged date of cheque in question. 17. Further as regards the arguments addressed by the learned counsel for complainant that the receipt Ex. D-1 in question has not been proved by the accused as per law, in this regard, it is pertinent to mention here that the complainant himself has admitted the receipt Ex. D-1 in his cross examination. He also identified the signatures of his employee Harjit Singh on the same and he also admitted that the letterhead to be that of the complainant firm. So, the document has been admitted by the complainant through its representative Pritpal Singh, who appeared into the witness box as CW-1 and it is a settled Law that things admitted need not be proved. 18. So, keeping in view the above said discussion, it becomes clear that the accused has discharged his legal liability on

25.06.2006 by making payment of Rs. 25000/- to the employee of the complainant firm and there was no legally recoverable debt standing against the accused for which he could have issued the cheque in question. So, when there was no legally enforceable debt against the accused, so no liability under Section 138 of NI Act arises against the accused. 19. So, keeping in view the above said discussion, it becomes clear that the complainant miserably failed to prove on record any legally enforceable debt against the accused for which the cheque in question might have been issued by the accused. So, all the ingredients of Section 138 of NI Act are not fulfilled, hence no offence under Section 138 of NI Act is made out against the accused. Consequently, the accused is hereby acquitted of the notice of accusation served upon him in the present complaint. His bail bonds and surety bonds of his surety are also discharged.”

(Emphasis supplied)

Learned counsel for the petitioner submits that while acquitting the petitioner in the aforesaid complaint, the trial Court had recorded a finding that in fact there was no outstanding legally enforceable debt or liability against the petitioner for which the cheque in question was issued and, in fact, the said cheque was a security cheque.

Learned counsel for the petitioner further submitted that the respondent-complainant thereafter filed an application bearing **CRM-A-582-MA-2014**, under Section 378(4) Cr.P.C., seeking leave to appeal against the said judgment of acquittal, however, the same was dismissed by this Court, vide order dated 30.09.2014 (Annexure P-2), upholding the aforesaid judgment of acquittal dated 21.01.2014

(Annexure P-1).

Learned counsel for the petitioner has further argued that the present complaint (Annexure P-3) has been filed in the year 2013 and with the same set of allegations in para No. 6 of the complaint, it is stated that the complainant has already filed a complaint under Section 138 of the N.I. Act and in para No. 8 of the complaint, it is stated that the complainant has right to file a complaint under Section 138 of the N.I. Act as well as a complaint under Section 420 IPC. A bare perusal of entire complaint shows that it is alleged that petitioner, being a friend, had obtained a loan from the complainant and the cheque issued for clearing the loan was dishonoured. It is nowhere alleged in the entire complaint how the petitioner has committed the offence, much less, no allegation of *mens rea* on the part of the petitioner to commit the offence under Sections 406 and 420 of the IPC are pleaded.

Learned counsel for the petitioner further submits that thereafter, vide order dated 15.07.2014 (Annexure P-4), the petitioner has been summoned to face trial under Section 420 IPC. It is submitted that though at the time of filing of the present complaint, the earlier complaint, filed under Section 138 of the N.I. Act, was pending, however, before passing of the impugned summoning order dated 15.07.2014, the petitioner already stood acquitted in the aforesaid complaint filed under Section 138 of the N.I. Act, vide order dated 20.01.2014 (Annexure P-1).

Learned counsel for the petitioner has further submitted that in case the complainant had brought this fact to the notice of the trial Court that vide judgment dated 20.01.2014 (Annexure P-1), the petitioner stands acquitted in the complaint filed by him under Section 138 of the N.I. Act on

the same set of evidence, which was recorded in the present complaint as a preliminary evidence, on the basis of which, the petitioner was summoned, the trial Court would have sufficient material on record to record a finding whether in the second complaint, filed on the same set of allegations merely alleging that the petitioner has committed cheating with the complaint, the petitioner-accused be summoned or not.

Learned counsel for the petitioner has further submitted that not only the petitioner stands acquitted in the complaint filed under Section 138 of the N.I. Act but a categorical finding has been recorded that on the date of presentation of the cheque in question, the petitioner was not under any legally enforceable debt or liability and, therefore, there was no occasion for the complainant to file a subsequent complaint under Sections 406 and 420 of the IPC with the same set of allegations especially in view of the fact that in both the complaints, the complainant-firm is represented through Pritpal Singh.

Learned counsel for the respondent-complainant has relied upon ***2012 (2) R. C. R. (Criminal) 757, Sangeetaben Mahendrabhai Patel vs. State of Gujarat and another***, wherein Hon'ble Supreme Court has held that during the pendency of the proceedings under Section 138 of the N.I. Act, prosecution under Sections 406 and 420 of the IPC can be launched as in the said case the revision petition arising out of the proceedings under Section 138 of the N.I. Act were subjudice before the High Court and it was held that in the prosecution under Section 138 of the N.I. Act, the *mens rea* i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved, however, in the case under IPC, the issue of *mens rea*

may be relevant.

Learned counsel for the respondent-complainant has also relied upon **2011 AIR (SC) 641 Kola Veera Raghav Rao vs. Gorantla Venkateswara Rao and another**, wherein Hon'ble Supreme Court has held that if an accused is convicted under Section 138 of the N.I. Act, the subsequent prosecution under Section 420 IPC of the same effect cannot be held barred as per Section 300(1) Cr.P.C.

After hearing learned counsel for the parties, I find merit in the present petition.

There is no dispute about the ratio of law laid down in **Sangeetaben Mahendrabhai Patel's** case (supra), however, the facts in the said case are entirely different from the present case. In the said case, revision filed by the accused against his conviction was pending before the High Court whereas in the instant case, the revision petition filed by the complainant against the acquittal of the petitioner stands dismissed, vide order dated 30.09.2014 (Annexure P-2). Similarly, the ratio of law laid down in **Kola Veera Raghav Rao's** case (supra) is also not applicable to the present case as in the said case also the accused person was convicted under Section 138 of the N.I. Act and, therefore, it was held that the subsequent prosecution under Section 420 IPC is not bad in the eyes of law. At the cost of repetition, in the instant case, not only the petitioner stands acquitted in the proceedings under Section 138 of the N.I. Act but a categorical finding has also been recorded by the trial Court that the petitioner-accused was not under any legally enforceable debt or liability as he has cleared the amount as is clear from the judgment of acquittal dated 20.01.2014 (Annexure P-1). Therefore, there was

no *mens rea* on the part of the petitioner to cheat or that he had any dishonest intention qua the respondent-complainant. Hence, the second complaint filed under Sections 406 and 420 of the IPC (Annexure P-3) and the impugned order dated 15.07.2014 (Annexure P-4) are not sustainable as it was not brought to the knowledge of the trial Court, on the date of the passing of the impugned order dated 15.07.2014, that the petitioner-accused stands acquitted in the proceedings under Section 138 of the N.I. Act on 20.01.2014 and a specific finding has been recorded that the petitioner was not under legally enforceable debt or liability to pay to the complainant. If the said judgment was produced before the trial Court, the trial Court could form an opinion contrary to the opinion which was formed in the impugned order dated 15.07.2014.

In view of the above discussion, the present petition is allowed and the Criminal Complaint Case No. 32040/2013 (Annexure P-3) as well as summoning order dated 15.07.2014 (Annexure P-4) are quashed.

Since the respondent-complainant has intentionally and deliberately concealed the judgment dated 20.01.2014 from the notice of the trial Court, the respondent-complainant is directed to pay ₹15,000/- as costs to the petitioner.

September 11, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*