

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

CRM-M No.15467 of 2010 (O&M)

Date of decision: 20th November, 2018

Ashok Bhai Keshavji Bhai Pansuria

... Petitioner

Versus

Ramesh Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Tapan Yadav, Advocate for the petitioner.

Mr. N.S. Shekhawat, Advocate for the respondent.

FATEH DEEP SINGH, J.

The short point that has cropped up in this petition under Section 482 Cr.P.C. preferred by petitioner Ashok Bhai Keshavji Bhai Pansuria against respondent complainant Ramesh Singh is if while proceeding in a complaint preferred under Section 138 Negotiable Instruments Act, 1881 by trying the same as a summons case and when the Court has passed summoning order, can an evidence be allowed to be placed on record leading to discharge of the accused.

The facts that need to be illustrated are that a complaint under Section 138/142 of the Negotiable Instruments Act, 1881 was filed by Ramesh Singh present respondent against accused present petitioner Ashok Bhai Keshavji Bhai Pansuria on the allegations that the accused had given a cheque dated 23.08.2005 for a sum of Rs.6.00 lacs bearing

No.173743 drawn on Mohendergarh Central Coop. Bank Ltd., Branch Nangal Chaudhary and when the holder of the cheque presented the same for encashment, the same stood dishonoured and after necessary steps in that direction, present case was got filed. The Court of learned Judicial Magistrate 1st Class, Narnaul, after taking preliminary evidence of the complainant comprising of affidavit of the complainant Ex.P1, cheque Ex.P2, Memo of the Bank Ex.P3, postal receipt Ex.P4, Notice Ex.P5 and AD Ex.P6, had issued summoning order dated 17.02.2006 under Section 138 of Negotiable Instruments Act, 1881. It is thereupon, at the time of service of notice of accusation, the learned Magistrate vide orders dated 22.02.2007 placing reliance on retirement deed (Annexure P2) dated 23.08.2005, discharged the accused. The same was challenged by the complainant before the Court of learned Additional Sessions Judge, Narnaul who through impugned order dated 09.12.2008 reversed the orders of the Court below and ordered the Magistrate to proceed ahead into the matter as per law. The same is subject matter of dispute before this Court.

During the course of arguments, the Court vide its orders dated 17.02.2016 has categorically drawn the conclusion that prima-facie commission of offences under Sections 138/142 Negotiable Instruments Act, 1881 was made out against the accused and that is how the

summoning orders dated 17.02.2006 were passed. It is an order which was passed on the preliminary evidence adduced before the learned Magistrate and how at the time of service of notice of accusation, the Court had considered retirement deed dated 23.08.2005 placed on the record by the accused. Firstly, as has been argued, the Court on one hand at the time of summoning order had drawn the conclusion that there was prima facie case to summon the accused for commission of offences under the Negotiable Instruments Act, 1881 and thereafter, without there being any stage of adducing evidence, considered the documents of the defence and discharged the accused which is contrary to the spirit of law that a Magistrate cannot revise his own orders. Reliance placed on **‘Adalat Prasad vs. Rooplal Jindal’ 2004(4) RCR (Criminal) 1.** Furthermore, the Court below in the impugned order had considered at length the ratios laid down in a Full Bench view of the Hon’ble Supreme Court in **‘S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & another’ 2006(1) SLJ 337; and ‘State of Orissa vs. Debendra Nath Padhi’ 2005 SCC (Cri) 415,** where their Lordships had clearly observed that a person who is sought to be made accused, has no right to produce any document or evidence in defence at the stage of issuance of process or at the stage of framing of charge. To similar effect is the view of our own High

Court, in ‘**Gopi Chand vs. Davender Mangla & others**’ 2006(4) RCR(Criminal) 320.

Learned counsel for the petitioner could not convince this Court how there has been misconstruing of the law by the Court below. Though it has been rightly argued on behalf of the petitioner to the arguments of the respondent side that the accused petitioner has a right to audience of the Court but that does not mean that the same is available at any stage of the trial. It is only when the defence is given an opportunity either to cross-examine the witnesses of the complainant or to record his statement under Section 313 Cr.P.C. or lead evidence in defence, the accused has a right to say it so. By what means consequent upon the issuance of summons and putting in appearance, the accused stood discharged and how the Court has drawn the conclusion that the retirement deed stands admitted by the complainant side, is a matter which would have been adjudicated during the cross-examination of the complainant on that particular document by the defence. By virtue of being a trial as a summons case and with a view that the accused appears before the learned Magistrate, the only recourse available to the Court below was to serve notice of accusation and to seek his stand if pleads guilty or has any defence to make. Since the accused as per the present scenario has not pleaded guilty, then the proper recourse for the learned

Magistrate was to have proceeded with the trial as a summons case and he ought to have followed the procedure laid down in Section 254 Cr.P.C. The learned counsel for the petitioner could not convince this Court how or in what manner there has been miscarriage of justice by the impugned findings necessitating intervention by this Court. There is neither any illegality nor perversity to invoke the provisions under Section 482 Cr.P.C. The petition being hopelessly without any merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

November 20, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No