

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

**CRM-M-14789-2017 (O&M)**

**Date of decision : 6.3.2018**

Kamal Kumar

... Petitioner

**VERSUS**

Mahesh Garg

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr. Abhimanyu Singh, Advocate,  
for the petitioner.

Mr. Ashwani Bhardwaj, Advocate,  
for the respondent.

\*\*\*\*\*

**RAJ SHEKHAR ATTRI, J.(Oral)**

This is a petition under Section 482 of Code of Criminal Procedure (in short, "Cr.P.C.") for quashing of criminal complaint No.67 of 2016 titled as Mahesh Garg v. Kamal Kumar and order dated 27.7.2016 (Annexure P-2) passed by learned Chief Judicial Magistrate, Bhiwani vide which the petitioner has been summoned as an accused.

Complaint (Annexure P-1) was filed before the learned Magistrate, Bhiwani under Section 138 of Negotiable Instruments Act on the allegations that the petitioner has obtained friendly loan in the sum of ₹ 6 lacs on different dates. However, in discharge of the above said legal enforceable debt, he issued cheque No.048666 dated 10.2.2016 for a sum of ₹ 6 lacs from his own account. However, when the cheque was submitted to the bank, it was returned with the remarks that the signatures of the drawer differs on the cheque. The complainant issued legal notice under Section

138 of Negotiable Instruments Act and when the cheque amount was not returned, he filed a criminal complaint No.67 of 2016 titled as Mahesh Garg v. Kamal Kumar on 28.3.2016 (Annexure P-1).

After conducting preliminary enquiry, learned Magistrate summoned the petitioner as an accused. On his appearance, accusation of charge (Annexure P-2) was framed.

The petitioner moved an application before the learned trial Magistrate (Annexure P-3) for his discharge on the ground that the cheque belongs to firm 'Dayal Fashion' but the said firm has not been impleaded as an accused, therefore, the present petition was not maintainable. This application was dismissed by learned Magistrate vide order dated 1.4.2017 (Annexure P-5).

I have heard the learned counsel for the parties and gone through the record available on the file.

Undisputedly, the cheque has been issued by the petitioner and the same has been signed by him.

It has been admitted case of the petitioner that he runs the business in the name and style of 'Dayal Fashion'.

Learned counsel for the petitioner has contended that this is a sole proprietorship firm and thus, the petitioner is the sole proprietor. Thus, the business concern of the petitioner is neither a firm nor a company. Therefore, it cannot be said if the complaint is bad in the eyes of law for non-joining of 'Dayal Fashion' as co-accused in the case.

In this view of the matter, impugned order does not suffer from any illegality, infirmity or irregularity. Accordingly, the present petition

stands dismissed. However, the petitioner is at liberty to take all defence

pleas available to him before the learned trial Magistrate. Nothing expressed above will affect the merits of the case.

**March 6, 2018**  
Paritosh Kumar

**( RAJ SHEKHAR ATTRI)**  
**JUDGE**

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |