

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-43167-2018 in/and
CRM-M-18259-2016 (O&M)
Date of Decision:- 6.12.2018

Jeevan Khanna

... Petitioner

Versus

M/s Mool Chand Motors & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Manish Soni, Advocate, for the applicant-petitioner.

GURVINDER SINGH GILL, J. (Oral)

CRM-43167-2018

In view of the reasons mentioned in the application, the same is allowed and the date of hearing is preponed from 1.2.2019 to today itself.

The main case is taken on Board.

CRM-M-18259-2016 (O&M)

The petitioner assails order dated 25.5.2013 (Annexure P-1) passed by the learned trial Court in complaint No. 14, dated 7.6.2008.

A few facts, necessary to notice for disposal of this petition are that the petitioner had initially filed a complaint under Section 138 of the Negotiable Instruments Act against the respondents pertaining to dishonour of a cheque for an amount of ₹69 lacs. However, during the pendency of the said complaint before learned Judicial Magistrate 1st Class, Amritsar, a

compromise was effected amongst the parties and consequently the petitioner withdrew his complaint in view of the compromise on 3.6.2006.

The said order dated 3.6.2006 reads as follows:

*“Present: Complainant with Sh. Ashwani Sharma, Advocate.
Accused on bail with Sh. D.M.Zakhmi, Advocate.*

Matter has been compromised between the parties compromise has been placed as Ex.C-1. Accused has issued seven cheques as per compromise. Statement of complainant Jiwan Khanna and accused Rajinder Kumar Sharma recorded. In view of statement made by the complainant, the present complaint is dismissed as withdrawn. Accused is discharged. File be consigned to the record room.

*-Sd-
Announced: (Daljit Singh Ralhan)
03.06.2006 Judicial Magistrate 1st Class, Amritsar”*

The aforesaid compromise referred to as Ex.C-1 in order dated 3.6.2006 has been annexed with this petition as Annexure P-3, a perusal of which shows that although the cheque in question was for an amount of ₹69 lacs but the compromise was effected for an amount of ₹ 43 lacs and for which the accused paid 7 post dated cheques, the details of which have been mentioned as follows:

Sr. No.	Cheque number	Drawn on
1.	165351	The Jammu & Kashmir Bank Ltd. Vasant Vihar Branch, New Delhi.
2.	165352	The Jammu & Kashmir Bank Ltd. Vasant Vihar Branch, New Delhi.
3.	165353	The Jammu & Kashmir Bank Ltd. Vasant Vihar Branch, New Delhi.
4.	165354	The Jammu & Kashmir Bank Ltd. Vasant Vihar Branch, New Delhi.
5.	165355	The Jammu & Kashmir Bank Ltd. Vasant Vihar Branch, New Delhi.
6.	165356	The Jammu & Kashmir Bank Ltd.

		Vasant Vihar Branch, New Delhi.
7.	165357	The Jammu & Kashmir Bank Ltd. Vasant Vihar Branch, New Delhi.

The learned counsel has submitted that the accused however, did not honour the terms of the compromise inasmuch as whenever the aforesaid 7 cheques were presented for encashment, the same were dishonoured and in respect of which 7 different complaints have been filed by the petitioner which are pending.

Learned counsel submits that although he has been pursuing with the remedy available to him for prosecuting the accused in respect of dishonour of the 7 cheques, given to him pursuant to the compromise but he had moved an application for revival of his earlier complaint also which had been dismissed as withdrawn on 3.6.2006, as there was some doubt as regards maintainability of complaints instituted on account of dishonour of cheques given pursuant to a “compromise” in respect of dishonour of original cheque of ₹69 lacs especially in view of judgment of Hon’ble the Supreme Court rendered in Lalit Kumar Sharma and another Vs. State of U.P. and another 2008(3) RCR (Civil) 80.

Learned counsel has thus submitted that since the petitioner did not honour the terms of compromise, therefore, the impugned order dated 3.6.2006 be set aside and he be permitted to pursue the complaint initially filed by him pertaining to dishonour of cheque for an amount of ₹ 69 lacs.

I have considered the aforesaid submission. As far as order dated 3.6.2006 is concerned, a perusal of the same shows that when the said complaint was withdrawn by the complainant, the withdrawal was not

conditional and no right was reserved for reviving the complaint. Consequently, this Court does not find any reason to interfere with the impugned order dated 25.5.2013 (Annexure P-1) whereby an application moved by the complainant seeking revival of his complaint had been dismissed.

Since, the earlier complaint filed by the petitioner had been specifically withdrawn by him without reserving any right for revival of the same, therefore, this Court is of the opinion that the petitioner is well within his rights to pursue the complaints filed by him on account of dishonour of the 7 cheques which had been given to him in lieu of withdrawal of his earlier complaint in accordance with the compromise effected amongst the parties. The said dishonour furnished him with a fresh cause of action, especially when the earlier proceedings had been brought to an end, by issuance of these very 7 cheques.

As far as the judgment of Hon'ble Supreme Court rendered in Lalit Kumar Sharma's (Supra) case is concerned, a perusal of the same shows that the same was passed on the distinct facts inasmuch as in cited case the initial complaint during the course of which a compromise had been effected amongst the parties had not been dismissed as withdrawn but was still pending and it was during the pendency of the initial complaint that the complainant chose to file complaints on account of dishonour of the cheques which had been given in lieu of the compromise. Such like prosecution on the basis of the cheques given in compromise while the first complaint was also pending would have virtually amounted to double jeopardy. The position in the present case is entirely different inasmuch as the earlier

complaint was dismissed as withdrawn without reserving any rights for
reviving the same. Consequently, the petitioner is well within his rights to
pursue the complaints on account of dishonour of the cheques which had
been given in lieu of the compromise.

The petition stands dismissed with the aforesaid clarification.

December 6, 2018
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No