

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

CRM-M-27046 of 2018.

Decided on:- November 13, 2018.

Gaurav Gupta.

.....Petitioner.

Versus

Joginder Goel and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Dr. Deepak Jindal, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.PC for setting aside the impugned order dated 01.09.2015 (Annexure P-1), whereby the complaint under Sections 406, 420, 506 and 120-B IPC filed by the petitioner-complainant against the respondents was dismissed by learned Chief Judicial Magistrate, Kaithal.

Similarly, the judgment dated 20.02.2018 (Annexure P-2) has also been impugned, whereby the revision petition filed by the petitioner against the aforesaid order dated 01.09.2015 passed by learned Magistrate, was dismissed by learned Additional Sessions Judge, Kaithal.

Briefly stated, petitioner Gaurav Gupta (hereinafter mentioned as the complainant) had filed a complaint against respondents No.1 and 2 Joginder Goel and Manoj Kumar (hereinafter mentioned as the accused) with

the allegations that the accused party is known to the complainant for the last 8-10 years. The nephew of the complainant was ill and accused No.1 helped the complainant during his illness. Accused No.2 is the nephew of accused No.1. Both the accused used to apply for plots in HUDA whenever registration was floated in the State of Haryana. The accused allured the complainant to join them in this business. The accused had stated that they had purchased a plot at Sector 13, Kurukshetra and accordingly, the complainant gave Rs.1,07,000/- to the accused as his share to the extent of 10%. Bimal Kumar Malakpuria son of Chaturbhuj Malakpuria had given 33% share, whereas rest of the share was to be given by the accused.

The Government floated a scheme for HUDA plots at Ellenabad, District Sirsa and the accused applied for the plot in the name of complainant also. However, the accused with malafide and dishonest intention from the very beginning obtained 10 signed blank cheques from the complainant on the pretext that these cheques are to be given to HUDA office, Ellenabad and after certain formalities, the same were to be returned to the complainant when the instalments of the plot were cleared. The complainant did not foresee any dishonesty. The complainant and Bimal Kumar asked the accused party about the status of plot in Kurukshetra. However, the accused party kept on lingering the matter on the pretext of price hike. However, later on, the complainant came to know that the accused had not purchased any plot at Kurukshetra and under the garb of a criminal conspiracy grabbed Rs.1,07,000/- from the complainant.

On 09.02.2012, accused No.2 Manoj Kumar came to the complainant to settle accounts in lieu of the plot at Ellenabad and gave a

cheque for an amount of Rs.1,00,000/- to the complainant. However, on 30.04.2012, when the said cheque was presented by the complainant in his bank account, the same was dishonoured on account of insufficient funds on 04.05.2012. The complainant approached the accused persons, who assured him to pay the said amount along with statement of accounts in lieu of the plot at Kurukshetra. Thereafter, in August 2012, the complainant received a notice from the Court and came to know that accused No.1 has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 by misusing the cheque entrusted to the accused persons for enclosing the same with the application form of HUDA plot at Ellenabad.

The said complaint was sent for enquiry under Section 202 Cr.PC, wherein the Enquiry Officer reported that the parties had a monetary transaction with each other. Accused No.1 had deposited entire money with HUDA, Sirsa in the name of complainant Gaurav Gupta, but the complainant and his father Jagdish Gupta did not produce any document to show that money was actually given by them for purchase of HUDA plot. Thus, it was found that the parties are dealing with each other in property business and are sharing the profits mutually.

While dismissing the complaint vide impugned order dated 01.09.2015, learned trial Court has observed as under:

“From the entire preliminary evidence led on file, it appears that present complaint pertain to certain monetary dispute between the parties and by filing the present complaint, the complainant is making court as an instrument to set criminal machinery against accused. The Hon’ble Supreme Court in Indian Oil Corporation Vs. NEPC India Ltd. & Ors. 2003(3)

RCR (Cr.) 740 (SC) and in Inder Mohan Goswami Vs. State of Uttaranchal 2007(4) RCR (Cr.) 548 (SC), has already cautioned about the growing tendency in business circles to convert purely civil dispute into criminal cases. The Hon'ble Supreme Court has further observed that any effort to settle civil dispute and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Though, while summoning, the court is only to ascertain the prima-facie case but in the present complaint even no prima-facie case is made out."

The aforesaid order dated 01.09.2015 passed by learned trial Court was challenged by the petitioner before the revisionary Court, but the revision petition was also dismissed by learned Additional Sessions Judge, Kaithal vide impugned judgment dated 20.02.2018.

It is in these circumstances, the complainant has filed the present petition.

Learned counsel for the complainant has argued that the Courts below have misread and misconstrued the oral as well as documentary evidence on record. The complainant has established a *prima facie* case against the accused. The contention raised by the complainant that the accused had allured him to join them in their business of purchasing plots has wrongly been disbelieved by the Courts below. The accused had obtained 10 blank signed cheques from the complainant on the ground that the cheques are required to be given to HUDA in its office at Ellenabad. However, when the complainant asked the accused about the status of plot at Kurukshetra which they had applied, it transpired that the accused had not purchased any

plot at Kurukshetra and under the garb of a criminal conspiracy, had grabbed Rs.1,07,000/- from the complainant.

He has further contended that accused No.1 had also filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the complainant and in that complaint, the complainant was acquitted of the charges framed against him by learned Judicial Magistrate 1st Class, Kaithal vide judgment dated 22.03.2017 (Annexure P-3).

The receipt of Rs.1,000/- deposited with the High Court Lawyers Welfare Fund, as ordered by this Court vide order dated 01.10.2018, has been produced by learned counsel for the complainant in Court, which is taken on record.

Having heard learned counsel for the complainant, this Court finds that the complainant has failed to prove that money was ever given to the accused at the time when the plot at Kurukshetra was applied. Even otherwise, the matter was sent for enquiry as provided under Section 202 Cr.PC, wherein it was reported that the parties have monetary transactions with each other and it is on account of a monetary dispute, the complaint has been filed.

The argument of learned counsel for the petitioner that in a complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by accused No.1, the complainant, who was arrayed as an accused has been acquitted of the charge framed against him vide judgment dated 22.03.2017 (Annexure P-3), is not relevant here as in that case, accused No.1, who was the complainant therein, had failed to prove that the cheque was issued in discharge of a legally existing liability. Rather, the said judgment further

substantiates the fact that the parties are involved in monetary transactions. Therefore, this Court finds that the complainant has failed to make out a *prima facie* case against the accused which could warrant their summoning in the case. Thus, the Courts below have rightly declined to summon the accused.

Accordingly, the present petition, being devoid of any merit, is dismissed.

November 13, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No