

Sr. No.126

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

**CRM-M-31873-2018
Date of decision:27.07.2018**

Sazid Khan

.....Petitioner

versus

State of Haryana and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Samrendra Kumar, Advocate
for the petitioner.**

Rajbir Sehrawat, J(Oral)

The present petition has been filed for quashing of FIR No.24 dated 23.01.2018 registered under Sections 120-B/406/420 of IPC at Police Station Gurgaon City, District Gurugram and all subsequent proceedings arising therefrom.

The brief facts of this case are that M/s Goel Sales Corporation had filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act on 10.01.2018. It was pleaded in the complaint that one Hasan Ahmed, the State Head, of M/s Astro Suppliers had assured the complainant to get the work of the Distributorship from Bombay Dyeing for District Gurugram. Thereafter, the said Hasan Ahmed met the complainant personally and the complainant had applied for Distributorship along with various documents which were given to Hasan Ahmed. For the above said assurance, Hasan Ahmed had taken money. However, in the mean-time, Hasan Ahmed had also ensured to the complainant the work-orders from the present petitioner firm. In the course of business, the

complainant had supplied the ordered item to the accused in the complaint case, which happened to be company as well as its proprietor, the present petitioner. Since the complainant had supplied goods to the accused company and its proprietor, therefore, as per the ledger account an amount of Rs.54,17,017/- was outstanding towards the accused upto 31.11.2017. For discharging of their liability, the petitioner, proprietor of the accused firm had issued cheque bearing No.050758 dated 29.11.2017 for an amount of Rs.20,00,000/-. That cheque was returned unpaid by the banker of the accused with the endorsement '*Funds Insufficient*'. For that non-payment of the cheque, the complainant filed the complaint against the accused/the present petitioner under Section 138 of the Negotiable Instruments Act. In that complaint, the present petitioner has been summoned as an accused.

However, thereafter, the complainant firm also lodged an FIR No.24 dated 23.01.2018 registered under Sections 120-B,406,420 of IPC at Police Station Gurgaon City, District Gurugram. In this FIR, the allegations are that the complainant had transferred Rs.50 lakhs in the account of the firm M/s Astro Suppliers through RTGS. The complainant was not provided Distributorship, as assured to him. Therefore, cheating has been done to him. It was further alleged that after the money was paid; the complainant contacted the above said Hasan Ahmed for getting the Distributorship. However, when complainant contacted the above said Hasan Ahmed for demanding his money back the latter said that he did not have any money to return, and if any money was demanded back he would kill the complainant. On these allegations, the said FIR was registered.

After investigation, the challan was filed by the Police against the accused including the present petitioner. During the investigation, it

came that when cornered by complainant for not ensuring the Distributorship to the complainant, the said Hasan Ahmed allured the complainant to procure more business for him from various firms and therefore, asked the complainant to supply goods for several firms. Money was not paid even for these goods supplied for various firms. Hence case was registered. Out of those firms, the proprietor of M/s Om Sons, Sunil Gupta was arrested. Thereafter, their servant was also arrested for helping the owner of that firm escape from arrest. The accused Hasan Ahmed was also arrested. When arrested, the accused Hasan Ahmed disclosed that out of the goods supplied by the complainant the goods amounting to Rs.51,30,575/- have gone to Vijay Tiwari, proprietor of M/s Shandilya Enterprises. Likewise, the goods worth Rs.20,17,848/- have gone to Sunil Gupta and goods for Rs.8,88,660/- have gone to M/s Sanu Drishti Export Pvt. Ltd. and goods worth Rs.54,17,017/- have gone to Sajid Khan, being proprietor of M/s Oriental Hometex. That is how the name of the present petitioner cropped up in the criminal case involved in the FIR, as part of the conspiracy to take out the goods in the name of the business from the complainant. It deserves mention here that in the FIR case, the present petitioner is not named by the complainant in the FIR as the accused. However, during investigation he is found involved in the case as a part of conspiracy under Section 120-B of IPC.

While arguing the case, learned counsel for the petitioner has submitted that once the criminal complaint is filed under Section 138 of the Negotiable Instruments Act before registration of the police case then the FIR under Section 420/406 of IPC can not be lodged for the same cause of action. In support of his argument, he has relied upon the judgment of the

Supreme Court rendered in **2000(1) RCR(Cr.) 707; G.Sagar Suri and another vs. State of UP. and others** and also the judgment of this Court rendered in **CRM-M-32912-2007** titled as **Ashok Puri vs. State of Punjab and another**, decided on 19.12.2011, which is solely based on the above said judgment of the Supreme Court. Learned counsel for the petitioner has submitted that the proceedings under Sections 420/406 IPC as initiated on the basis of FIR in question are bound to be quashed. It is further contended that offences under Section 138 of the Negotiable Instruments Act and the offences under Section 420, 406 IPC are mutually exclusive. Still further it is contended that continuing the FIR case amounts to double jeopardy.

However, this Court does not find any force in the arguments of learned counsel for the petitioner. There is no concept of '*same cause of action*' or for that matter, of '*cause of action*' in the criminal jurisprudence. What is punishable in criminal law is the conduct of an accused or the consequences arising from such conduct as reflected in a fact or set of facts. If such two distinct facts or set of facts or the consequences thereof constitute more than one offences then the accused is liable to be prosecuted and punished for all such offences, whether the offences are punishable under the general penal law as contained in IPC only or the same are punishable under general criminal and special criminal law separately. It is settled law that mere fact that a conduct is punishable under special law is not the ground to hold that such conduct can not be punished under general criminal law. In the present case, the set of facts involved are of two different stages. In the complaint case, the factum of issuance of cheque on a business transactions and the dishonour thereof; is involved. For that the criminal complaint has been filed under Section 138 of the Negotiable

Instruments act. No fault could be found in that. Even the petitioner has not questioned the validity of the complaint filed by the complainant under Section 138 of the Negotiable Instruments Act in the present proceedings. So far as the FIR is concerned, it relates to several transactions/set of facts including supply of some of the goods by the complaint on the representation of the accused Hasan Ahmed which were ultimately received by the present petitioner. The present petitioner does not claim to have any connection with the complainant, of business, or otherwise, therefore, the goods were supplied only through representation by Hasan Ahmed. Admittedly, the petitioner has received the goods but has not made the payment. After investigation, it has been found by the Police, as mentioned in the Final Form/Report(under Section 173 Cr.P.C.), that instead of returning the money taken by Hasan Ahmed for getting the Distributorship to the complainant, he started alluring the complainant further to supply certain goods to certain entities through the said Hasan Ahmed. One of those entities happened to be the firm of the present petitioner. After investigation, the Police has found an angle of conspiracy in this matter which involves the present petitioner as well. As is so discernible from the FIR; even the name of the present petitioner does not find mentioned in it. Therefore, it can not be said by any stretch of imagination that the proceedings in the FIR against the petitioner has been started by the complainant as misuse of the process of the court, and therefore, should be quashed on that ground. Once the Police has found material to present the challan against the petitioner; showing his involvement in the conspiracy, then *per se*, the FIR can not be quashed on this ground.

The argument of learned counsel for the petitioner that the

offences under Section 138 of Negotiable Instruments Act and Section 420,406 IPC are mutually exclusive and therefore, once the complaint under Section 138 of Negotiable Instruments Act has been filed and summons have been issued by the Trial Court in the complaint case, finding, prima facie; the existence of legally enforceable liability, thereafter, the FIR under Section 406, 420 IPC, which presumes criminal intent, is not maintainable in law, also does not find favour from this Court. It is well settled law that in criminal jurisprudence, an act of an accused becomes punishable from the stage of attempt, although in some cases it becomes punishable even from the stage of preparation. However, by any means, attempt to commit an offence, conspiracy to commit an offence, and the commission of substantive offence, in one stage and chain of acts, and then as a consequence of those acts but at different stage and different act resulting into a different offence under a different law can always be carried forward separately. So far as the complaint under Section 138 Negotiable Instruments Act is concerned, the set of facts which constitute this offence start only from the stage when liability is created, in discharge of that liability the cheque is issued and completed when the cheque is dishonored. This offence neither explicably requires mense rea nor explicitly excludes it. However, there can definitely be situations where liability incurred by the accused of offence under Section 138 of the Negotiable Instruments Act results from fraud, misrepresentation or through a conspiracy committed at prior stage of sequence or facts. In that situation, by no means it can be said that an accused can not be prosecuted for the fraud committed by him, conspiracy in which it is involved or the misrepresentation from which he has benefitted. Therefore, simply because a complaint is filed under

Section 138 of the Negotiable Instruments Act, does not mean that under any circumstances, a person can not be prosecuted under Sections 420, 406 IPC. Even in case where the legally enforceable liability is incurred by a person under a commercial agreement, which was procured by such person by coercion, undue influence fraud or misrepresentation, the liability can still be enforced by the person upon whom fraud was played, as prescribed under Section 19 and 19-A of the Indian Contract Act. Such agreement is voidable only at the option of the person who has been cheated and not void altogether or voidable at the option of the person who has cheated. So despite being based on fraud, such liability remains legal and valid against the person who had played the fraud. In that situation, a person would definitely be liable for the offence under Sections 420 and 406 IPC as well as under Section 138 of the Negotiable Instruments Act.

Another aspect which clarifies this situation is that in a trial only under Section 138 of the Negotiable Instruments Act, Court can not convict a person for fraud or misappropriation although the liability may be arising from entrustment of the amount itself as well. The limited scope of trial and punishment for Section 138 of the Negotiable Instruments Act is the punishment for dishonor of the cheque. If the argument of learned counsel for the petitioner is accepted then the offence under Section 406 or 120-B IPC or for that matter Section 420 IPC are liable to go unpunished, despite the same having been committed in the open glare of law.

Although the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***G.Sagar Suri*** (*supra*), however, that judgment has not laid down, as a matter of precedent, that once a complaint is filed under Section 138-A of the Negotiable

Instruments Act then no FIR, under any circumstances, be filed or carried on against the accused for an offence under Sections 406, 420 IPC or under Section 120-B IPC. This judgment is distinguishable on the facts of the present case. A bare perusal of the judgment shows that this judgment was rendered by the Hon'ble Supreme Court in the facts and circumstances of that case. Entire family of the accused was sought to be involved in the crime. In that case, the accused had even retired from the company as a Director, the Police had not filed challan against the accused and there was even difference of names of the persons mentioned in the FIR. Otherwise, the judgment gives an indication that Section 420 and 406 IPC could have been added in the complaint filed under Section 138 of the Negotiable Instruments Act. Therefore, the Hon'ble Supreme Court observed that once, for the same grievance, the petitioner in that case, has lodged complaint under Section 138 of the Negotiable Instruments Act then in the name of separate prosecution, he has no reason or occasion to harass the entire family. In the present case, it is clear from the record that the case under Sections 420 and 406 IPC was initiated against the firm M/s Astro Suppliers and its authorised agent, Hasan Ahmed. The present petitioner is found involved in the case by police as participant in the conspiracy, since the present petitioner received certain goods supplied by the complainant through Hasan Ahmed. This aspect, has been duly supported by the Final Report filed by the Police under Section 173 Cr.P.C.

In any case, it is not a stage where the present petitioner is being held finally guilty either in the FIR case or in the complaint case. If the petitioner is not involved in any conspiracy he will have every occasion to get his name cleared at several stages by showing to the Court that he is

not involved in any conspiracy. If he succeeds in showing to the Court that it was a distinct and pure business transaction between the complainant and the present petitioner then, of course, it would be only the complaint case which shall be effective. But till then the material collected by the Police justifies the involvement of the present petitioner in conspiracy of committing offence under Sections 420, 406 IPC as well. This Court does not find any factual basis either; to terminate the proceedings midway at this stage.

The next argument of the learned counsel that the FIR case is hit by protection against '*Double Jeopardy*' is also without any substance. Article 20 of the Consitution of India prohibits conviction of person twice for the '*same offence*' and not for separate and distinct offences. Similarly, Section 300 of Cr.P.C. prohibits prosecution and conviction of a person again; only after such person is tried and convicted or acquitted of the said offence once. None of the above is the situation in the present case. So the protection against double jeopardy is not even remotely attracted in the present case.

In view of the above, this Court does not find any ground to quash the FIR against the present petitioner.

Dismissed.

27th July, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*