

CRM-M-43550 of 2015

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

CRM-M-43550 of 2015
Date of decision: 22.10.2018

Naresh Kumar (Kaka)

.....Petitioner

versus

Naresh Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Sandeep Arora, Advocate, for the petitioner.
Mr. D.K. Bhatti, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for quashing Criminal Complaint No.34261 of 2013 dated 12.08.2013 titled as “Naresh Kumar v. Naresh Kumar (Kaka)” under Section 138 of the Negotiable Instruments Act (for short the 'Act'), pending before the learned Judicial Magistrate Ist Class, Jalandhar.

Learned counsel *inter alia* contends that a similar complaint of the respondent against the petitioner was dismissed by the trial Court vide judgment dated 07.05.2015 which has attained finality on dismissal of appeal of the respondent by the First Appellate Court. The cheque in question and the cheque pertaining to the dismissed complaint were obtained by the respondent from the petitioner on the same day and on similar pretext of sending him abroad, but lateron, he became dishonest and

CRM-M-43550 of 2015

complaint against the petitioner. Since finding of the trial Court has come against the respondent on similar facts, therefore, impugned complaint cannot continue and, thus, is liable to be quashed.

On the other hand, learned counsel for the respondent-complainant contends that dismissal of a against the petitioner has no relevancy to the impugned complaint in view of Section 42 of the Evidence Act. That apart, petitioner has not denied his signature on the cheque in question and that the same pertains to his bank account. Therefore, presumption under Section 139 of the Act *prima facie* has to be drawn in favour of the respondent. The matter in dispute between the parties can be decided only after holding trial as the same requires appreciation of evidence. The instant petition is not maintainable, in view of availability of legal remedy of revision to the petitioner.

Having given thoughtful consideration to the submissions made by learned counsel for both the sides, this Court finds instant petition completely devoid of any merit for the reasons to follow.

Judgment dated 07.05.2015 (Annexure P-6) in another complaint of the respondent-complainant against the petitioner *ipso facto* does not effect the merits of the impugned complaint.

Since petitioner was having legal right to file revision, therefore, instead of filing instant petition under Section 482 Cr.P.C. proper course for the petitioner was to file revision.

Petitioner has not denied that the cheque in question pertains to his account and his signature on the same. Therefore, *prima facie* presumption under Section 139 of the Act has to be drawn in faovur of the respondent-complainant, unless rebutted by leading evidence.

CRM-M-43550 of 2015

Dismissed.

However, anything observed hereinabove shall not affect the merits of the case.

October 22, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No