

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

**CRM-M-7585-2015 (O&M)
Date of Decision : 18.7.2018**

Kuldeep Singh ... Petitioner

Versus

Jarnail Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Nitish Singhi, Advocate for the petitioner.

Ms. Avin Kaur Sandhu, Advocate for the respondent.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner assails order dated 26.05.2014 passed by learned Additional Sessions Judge, Ludhiana whereby a revision petition filed by him challenging summoning order dated 31.1.2013 (Annexure P-2) has been dismissed.
2. It may here, however, be mentioned that in the grounds of revision (Annexure P-5) filed before Court of Sessions and also in the impugned order, the summoning order is being referred to as order dated 5.2.2014 whereas petitioner was summoned vide order dated 31.1.2013. It appears that the petitioner after having been summoned vide order dated 31.1.2013 (Annexure P-2), had subsequently moved an application for his discharge which was dismissed on 5.2.2014 and which was challenged by way of filing

a revision which was also dismissed by the learned Additional Sessions Judge vide impugned order dated 26.5.2014. Somehow the order dated 5.2.2014 has not been annexed with this petition.

3. The respondent complainant had filed a complaint dated 5.4.2012 under Section 138 of Negotiable Instruments Act alleging therein that the petitioner with whom he was having cordial relations had taken an amount of ₹ 7 lacs from him as a friendly loan and subsequently upon his repeated requests, the petitioner had issued a cheque dated 15.2.2012 for an amount of ₹ 7 lacs but upon presentation of the same for encashment, the same was dishonoured with the remarks “non-MICR cheque”. The complainant alleged that the said remarks were obtained by the accused in connivance with bank officials and that in fact the accused was not having sufficient funds to honour the cheque in question. After serving requisite legal notice, the complainant proceeded to file complaint in which the following order was passed by learned JMIC on 31.1.2013 for summoning the petitioner:-

“Heard on summoning. Accused in discharge of his legal obligations, issued cheque No.85 dated 15.02.2012 for Rs.7,00,000/- which was dishonoured due to “Non-MICR Cheque”, legal notice dated 13.3.12 was given to accused, but of no avail. Hence, this complaint.

I have heard Ld. Counsel for the complainant and gone through the judicial file, photocopy of cheque Ex.C1, memo Ex.C2, legal notice Ex.C3 postal receipts Ex.C4, I find that there are sufficient grounds to summon the accused U/s 138 of N.I. Act. As such, accused is ordered to be summoned to stand trial for 10.5.2013.

(Rahul Kumar)
JMIC/31.01.2013”

4. As stated above, it appears that the petitioner subsequently moved an application for his discharge which was dismissed on 5.2.2014 which was challenged by way of filing revision petition which was also dismissed by the learned Additional Sessions Judge vide impugned order dated 26.5.2014.
5. The learned counsel for the petitioner while assailing the impugned order has admitted that in fact the bank account from which the cheque in question was issued i.e. account No. 4176 does not belong to him as is evident from the information furnished by the bank authorities pursuant to an application filed by him under provisions of Right to Information Act. The learned counsel in this context has referred to letter dated 13.11.2013 (Annexure P-4) vide which the bank had furnished information pertaining to account No. 4176 as follows:-

“The account no.4176 is not in the name of Mr. Kuldip Singh s/o Sh.Amar Singh.

....The information desired from our bank is third party information and available to the bank in its fiduciary relationship with the customer/employee etc. and Bank is bound to maintain secrecy of the transactions/details of its customers/employees etc. and therefore your request for information is rejected under Section 8(1)(e) of the Act.”

6. A perusal of the aforesaid information shows that while the bank has furnished partial information, it has declined to divulge complete information on grounds of maintaining secrecy.

7. The learned counsel for respondent has however pointed out that in fact it is a case where perhaps the petitioner had got a bank account opened by disclosing incorrect parentage and that the fact that the petitioner is not categorically disputing the existence of his signatures virtually demolishes the entire case of the petitioner and it does not lie in his mouth to say that the account does not belong to him.
8. Having considered the rival submissions addressed before this Court, while it is found the letter dated 13.11.2013 (Annexure P-4), to some extent, could support the case of the petitioner but the said document would be required to be duly established on the basis of the record maintained by the bank and by examining some official from the bank, more particularly when the petitioner is not specifically disputing his signatures on the cheque in question. In these circumstances it certainly needs to be examined as to whether the account in question actually belongs to some other person or as to whether the petitioner had himself opened the account by disclosing some different identity or different parentage. Such exercise can only be done after recording evidence especially of the bank officials and by perusing the relevant record maintained by the bank.
9. As such, the impugned order is not found to be suffering from any infirmity and the same is hereby upheld. The present petition needs to be dismissed on an additional score as well inasmuch as the petitioner has not annexed with this petition the order dated 5.2.2014 though it is the said order which was challenged in the impugned order dated 26.5.2014. There is no merit in this revision petition and the same is hereby dismissed.

10. It is, however, made clear that none of the observations made above shall be taken to be an expression on merits of the main case and the trial Court shall proceed with the matter independently without being influenced by any of the observations made above.

18.7.2018

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No