

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

CRM-M-27398-2016 (O&M)

Date of decision : 25.11.2019

Tarlok Nath Gupta

...Petitioner

Versus

Kashmira Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Sharma, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. for quashing of criminal complaint No.919 of 2013 dated 10.07.2013 titled as Kashmira Singh Vs. Tarlok Nath Gupta and others under Sections 467/468/471/406/420/506/120-B IPC and order dated 09.06.2016 by which the Judicial Magistrate decided to issue process with all consequential subsequent proceedings.

Some facts are required to be noticed. Sukhwinder Singh son of Kashmira Singh was having some financial transaction with the petitioner- Tarlok Nath Gupta according to which Tarlok Nath Gupta was to repay certain amount. Thereafter, Sukhwinder Singh and Tarlok Nath Gupta entered into a settlement in which it was admitted that Tarlok Nath Gupta had given three post dated cheques to Sukhwinder Singh and same are not in his possession at this moment but would be returned after finding the

same. The dues between the parties were settled. Compromise/alleged settlement (Annexure P-1) is dated 18.11.2009.

Thereafter, Sukhwinder Singh filed a complaint to the Senior Superintendent of Police, Khanna dated 20.02.2010 alleging that Tarlok Nath Gupta-petitioner herein and others have agreed to receive a sum of ₹15,00,000/- at Village Bagli Kalan on the pretext that Sukhwinder Singh-complainant would be sent overseas i.e. Italy by helping him in immigration. ₹9,00,000/- was paid. However, Sukhwinder Singh has not been sent to Italy and when confronted with, Tarlok Nath Gupta had handed over two cheques amounting to ₹3,00,000/- each which on presentation for encashment were dishonoured.

Sukhwinder Singh thereafter filed criminal complaint against Tarlok Nath Gupta and others in the Court of Judicial Magistrate Ist Class in September 2010. Allegations were by and large the same. It was also mentioned that the complaint was filed with the police but no action thereon has been taken. Sukhwinder Singh had also filed a criminal complaint under Section 138 of the Negotiable Instruments Act against Tarlok Nath Gupta. Sukhwinder Singh also filed civil suit for recovery of ₹11,61,000/- (₹9,00,000/- as principal amount + ₹2,61,000/- as interest) which is also stated to be pending. It may be significant to note here that in the criminal complaint filed by Sukhwinder Singh, entire transaction is stated to have taken place at Village Bagli Kalan and, therefore, it was pleaded that the Court of Judicial Magistrate Ist Class at Samrala has territorial jurisdiction. Averments made in para 11 of the complaint are extracted as under:-

“11. That the amount was handed over to the accused

persons at Village Bagli Kalan and the settlement was made at Village Bagli Kalan and the cheques were issued at Village Bagli Kalan and the offences were committed by the accused persons at Village Bagli Kalan, within the territorial jurisdiction of this Hon'ble Court. Hence, this Hon'ble Court has the jurisdiction to entertain, try and decide the present complaint.”

Kashmira Singh, father of Sukhwinder Singh filed a fresh criminal complaint in the Court of Chief Judicial Magistrate, Fatehgarh Sahib. In this complaint also, similar allegations with regard to Tarlok Nath Gupta having promised to send Sukhwinder Singh to Italy after charging a sum of ₹15,00,000/- and payment of ₹9,00,000/- in lieu thereof has been pleaded. Again similar allegations have been alleged that Tarlok Nath Gupta had agreed to refund the amount by issuing three cheques which on presentation were dishonoured. It has further been pleaded that neither son had been sent to Italy nor the amount has been refunded. In para 11, it has also been pleaded that a complaint was made to SSP, District Khanna and SSP Fatehgarh Sahib but no action has been taken.

In this complaint, with regard to territorial jurisdiction, following averments have been made:-

“12. That the cause of action with respect to cheating made by the accused persons with the complainant and his son at Village Kamma, Village Baghli Kalan, Village Karala and Bassi Pathana and as such the complainant and his son after having been by the accused persons had given Rs.9 lacs and documents and again the accused person conveying each other has cheated him and his son for Rs.9 lakh and no. of demand made for Rs.9 lakhs from the accused persons at

Village Kaman, Baghli Kalan, Karala and bassi Pathana and the accused persons initially lingering on the issue at these places and finally refused to pay the same and extend threats. The cause of action being continuous in nature also includes the cause of action at Bassi Pathana which falls within the territorial jurisdiction of this Hon'ble Court and as such this Hon'ble Court is competent to entertain the present complaint.”

On the basis of the aforesaid criminal complaint, Judicial Magistrate Ist Class has decided to issue process (summoning) Annexure P-8 dated 12.01.2016. Petitioner herein Tarlok Nath Gupta filed an application before the Court of Judicial Magistrate for dismissal of complaint on the ground that the Court does not have jurisdiction, while bringing to its notice all the facts. However, learned Court dismissed the application on the ground that Court does not have jurisdiction to recall the order of summoning.

Pursuant to the notice, respondent-Kashmira Singh had not chosen to appear. All the assertions which have been noticed stand un rebutted. Section 482 Cr.P.C. enables the High Court to exercise its inherent jurisdiction and prevent the abuse of the process of the Court. From the facts narrated above, it is apparent that Sukhwinder Singh and his family members are repeatedly lodging/filing false criminal complaints against the petitioner.

This Court has been informed that criminal complaint filed by Sukhwinder Singh in September 2010 was dismissed for non-prosecution on 03.08.2016 once the summoning order was issued in the complaint filed by Kashmira Singh on 12.01.2016. Even the civil suit filed by Sukhwinder

Singh for recovery of the amount has been got dismissed for non-prosecution. Complaint filed by Sukhwinder Singh under Section 138 of the Negotiable Instruments Act, 1881 has also been dismissed for non-prosecution.

Keeping in view the facts of the case particularly when the allegations made in the criminal complaints filed by Sukhwinder Singh and Kashmira Singh are in substance, same referring to same incident and occurrence, second complaint filed by the respondent-Kashmira Singh was not maintainable. This clearly was misuse of the process of the Court. Hence, the present petition is allowed.

Criminal Complaint (Annexure P-7) titled as Kashmira Singh Vs. Tarlok Nath Gupta and others, and summoning order passed by the Court alongwith all the consequential proceedings are quashed with costs of ₹50,000/- which shall be recoverable by the petitioner from the respondent herein.

25.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No