

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

CRM No.M-35398 of 2013 (O&M)

Date of Decision: January 23, 2019

Ajay Paul

...Petitioner

VERSUS

Davinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.C.Kinra, Advocate
for the petitioner.

Mr.Vivek K. Thakur, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent Davinder Singh for quashing of criminal complaint No.357-1 of 2005 dated 09.09.2005 titled as 'Davinder Singh vs. Vinay Nagpal and another', summoning order dated 22.08.2006, order dated 03.11.2012 and all proceedings arising out of the complaint.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the record shows that complainant filed the complaint against Vinay Nagpal and Ajay Pal Markan, Advocate under

Sections 420, 467, 468, 471 and 120-B IPC. It is stated in the complaint that complainant opened an account in UCO Bank, Malout Mandi and got his cheque book in his name bearing serial No.732041 to 732050. The blank cheques of that cheque book were signed by him but the dates were not filled and the same was lost while returning to his village. In this regard, complainant lodged report No.18 dated 19.12.2002 and also intimated to the Bank Manager on 20.12.2002 in order to avoid any misuse of the cheques by anybody. It is further stated in the complaint that accused Vinay Nagpal, is running a commission agent shop, where complainant used to visit, somehow got his cheque book. He with intention to cheat the complainant, filled cheque No.732041 dated 27.06.2003 for ₹5 lakhs, cheque No.732042 dated 08.07.2003 for ₹5 lakhs and cheque No.732043 dated 23.10.2003 for ₹4 lakhs, in favour of his firm namely M/s Nagpal Traders, by misusing the same. The complainant came to know about the misuse of the cheques when he engaged a counsel for his bail as the accused filed criminal complaints under Section 138 of the Negotiable Instruments Act against him. Then complainant along with Raghubir Singh, Lambardar and other respectable persons as a Panchayat, approached Vinay Nagpal and told him that earlier, there was some transaction with Devinder Pal (complainant) and the same has already been settled about four years back and asked him as to why he misused the cheque book which was lost. Vinay Nagpal put off the matter but later on, he admitted that blank signed cheque book of Davinder Singh has come into his hands and admitted his fault. It is also stated that complainant came to know about surpassing of his limit when he received notice on 04.05.2005 from Ajay Paul Markar Advocate, wherein, it is stated that he (complainant) had taken a sum of ₹1 lakh in

December 2002 from him as a loan and in this regard, cheque bearing No.732044 dated 27.12.2004 for ₹1 lakh was given. It is stated in the complaint that this cheque has already been lost, details of which have been narrated above. After the receipt of notice, the complainant came to know that Vinay Nagpal in collusion with his intimate person i.e. Ajay Paul Markan, Advocate, has misused one of the cheque by illegally filling the same.

On the basis of this complaint and preliminary evidence, the accused were summoned under Sections 420, 467, 468, 471 and 120-B IPC by learned SDJM, Malout. Learned trial Court dismissed the application for discharge of the accused vide order dated 03.11.2012.

The perusal of the record shows that complainant is alleging loss of cheque and misuse of cheques bearing No.732041 to 732043 along with other cheques but the complaints filed by the firm of Vinay Nagpal, the complainant of this complaint has been convicted upto Hon'ble Supreme Court and rather, Hon'ble Apex Court restored the sentence passed by learned Magistrate and ordered that sentence of Davinder Singh not to run concurrently, which means that defence of present complainant has not been believed in complaint cases.

The present petitioner has only issued legal notice qua another cheque bearing No.732044 while doing professional duty. The only allegation in the complaint is that he is intimate person of Vijay Nagpal and they have colluded with each other. There is nothing to show as to how petitioner is intimate person and how he has colluded. Otherwise also, the defence of present complainant has not been believed upto Hon'ble Supreme

which the present complainant states that have been lost and misused.

Keeping in view the above discussion and the fact that the petitioner has only issued legal notice on behalf of Vinay Nagpal, no offence is made out against him. The filing of complaint is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. Criminal complaint No.357-1 of 2005 dated 09.09.2005 titled as 'Davinder Singh vs. Vinay Nagpal and another', summoning order along with all subsequent proceedings, are hereby quashed.

January 23, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No