

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

CrI. Misc. No. M-5877 of 2014 (O&M)

Date of decision: November 14, 2019

Punjab Singh

.. Petitioners

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner.

Mr. Rakeshinder Singh Sidhu, A.A.G. Punjab.

Mr. Lalit Singla, Advocate
for complainant-respondent No.2.

SURINDER GUPTA, J.(Oral)

The petitioners have filed this petition under Section 482 Code of Criminal Procedure (for short, 'Cr.P.C.') seeking quashing of FIR No. 114 dated 23.11.2013 registered for offence punishable under Section 420 Indian Penal Code (for short 'IPC') at Police Station Khanauri, District Sangrur, along with all consequential proceedings arising therefrom.

FIR was got registered by respondent No.2 with the allegation that he had advanced a loan of ₹16 lakhs to the petitioner vide two cheques and the amount of both the cheques were transferred in his account. For the return of the loan amount, he issued a cheque of ₹18,17,000/- with the request to get the cheque encashed after 15.07.2013. The cheque, when presented, was dishonoured and when the complainant approached the petitioner and other co-accused, they instead of repaying loan amount,

threatened him.

After completion of investigation, challan against the petitioner was presented and other two co-accused named in FIR namely Nishan Singh and Gur Lal were found innocent.

Learned counsel for the petitioner has argued that respondent No.2 has filed a criminal complaint under Section 138 of Negotiable Instruments Act in which the entire payment of cheque amount was made and the complaint was withdrawn as settled under a compromise as per order dated 20.12.2016. Respondent No.2 has lodged the FIR with the allegation that he had issued the cheque on the inducement of petitioner while in fact, there was no inducement at the time of issuance of cheque by petitioner. Respondent No.2. had not parted with any property, cash, liquid assets etc. at the time when the cheque was given to him by petitioner towards repayment of loan and presented by him in bank for encashment. For dishonour of cheque by bank, he had filed complaint for offence punishable under Section 138 of Negotiable Instruments Act. The registration of FIR under Section 420 IPC and the continuation of trial after the compromise in case filed under Section 138 of Negotiable Instruments Act is misuse of the process of law.

Learned counsel for the respondent has argued that cheque was given at the time of advancement of loan, which makes out that petitioner had intention to cheat the complainant-respondent No.2. The cheque, when presented, was dishonoured as the payment of the said cheque was stopped. Ingredients of offence under Section 420 IPC are disclosed from the contents of FIR and were also proved during the course of investigation and

Court.

As per the complaint, copy of which has been placed on file as Annexure P-1, a sum of ₹18,17,000/- was due after the settlement of account and in discharge of his liability towards this payment, petitioner had issued cheque dated 15.07.2013 which, when presented to the bank, was dishonoured as its payment was stopped. Complainant availed the remedy provided under law by filing a complaint under Section 138 of Negotiable Instruments Act.

This fact is not disputed that the payment of the cheque amount under the compromise was made and the complaint was withdrawn. Order of the trial Court dated 20.12.2016 shows that the matter regarding the issuance of cheque and its dishonour has already been compromised. Present FIR is also based on similar facts, as such, continuation of trial of the petitioner in the matter, which has already been compromised, is a misuse of process of Court.

Here, Learned counsel for respondent No.2 has argued that besides filing the complaint under Section 138 Negotiable Instruments Act, respondent No.2 was also entitled to avail other legal remedies available to him under the criminal law.

So far as the above submission of learned counsel for respondent No.2 is concerned, the same cannot be disputed. However, the question, which arises for consideration in this petition is as to whether the ingredients to constitute the offence of cheating are made out from the allegations levelled in the FIR?

As per averments in the complaint filed by respondent No.2,

cheque in question was issued after settlement of account, whereby a sum of ₹18,17,000/- including interest, was found due towards the petitioner. It is evident that neither there was any inducement at the time of issuance of cheque nor respondent No.2 had delivered any property to the petitioner to attract the provisions of Section 415 IPC defining cheating for the offence punishable under section 420 IPC.

Keeping in view the fact that firstly, the matter has already been compromised and secondly, the ingredients of offence of cheating are not attracted in this case, I am of the considered view that continuation of trial of the petitioner in this case will result in misuse of the process of law. Hence, the instant petition is allowed and the impugned FIR No. 114 dated 23.11.2013 registered for offence punishable under Section 420 IPC at Police Station Khanauri, District Sangrur along with all consequential proceedings arising therefrom, is ordered to be quashed qua petitioner.

(SURINDER GUPTA)
JUDGE

November 14, 2019

Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No