

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6842-2017

DATE OF DECISION:-06.03.2019

M/S TOYOTO KIRLOSKAR
MOTOR PVT LTD.

...PETITIONER...

V.

JAIVEER SINGH POONIA

...RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.S. Rai, Sr. Advocate with
Ms. Rubina Virmani, Advocate, for the petitioner.

Mr. Nitin Thatai, Advocate with
Mr. Pawan Kumar, 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 bearing No.527 dated 12.01.2017, titled as "Jaiveer Singh Poonia vs. M/s Chadha Motors and others" under Section 138 of the Act, 1881 (for short, "Act") and summoning order dated 12.01.2017 (P-2) of the trial court, whereby it has been summoned to face trial.

Briefly, respondent filed a complaint under Section 138 of the Act, arraying 8 accused including petitioner as accused No.8, on the allegations that on 11.04.2016, he advanced a loan of ₹15,00,000/- on interest @ 1.50% per mensem for a period of 6 months to accused No.1, who in lieu thereof, issued a post dated cheque bearing No.197369 dated

had dishonored. Accused No.1 was a partnership firm, having two partners namely, Sumesh Chadha and Krishan Kumar Chadha arrayed as respondents No.2 and 3, who were also Director and Managing Director of accused No.4. Accused-respondents No.5, 6 & 7 were impleaded in their individual capacity and Director and Managing Director of respondent No.4. Respondents No.1 to 7 were agent, Managing Director and Director of respondent No.8. Therefore, they all were liable to be prosecuted under Section 138 of the Act including petitioner.

After recording preliminary evidence, petitioner was summoned vide order dated 12.01.2017 (P-2).

Learned counsel for the petitioner contends that there is no relationship of principal and agent in between petitioner and any of the accused. All the other accused are stranger to the petitioner. Petitioner has falsely been implicated. Even in para No.7 of the complaint, respondent has not levelled any allegations against petitioner. Rather, has simply pleaded that accused No.1 had issued post dated cheque to secure the loan amount and accused Nos.1 to 7 are inter se connected. Respondent has not levelled any allegations against the petitioner. Therefore, in the absence of any evidence, impugned complaint dated 12.01.2017 filed against the petitioner is liable to be quashed.

On the other hand, learned counsel for the respondent taking the aid of judgment titled as **"Venkatesh Waran and anr. vs. Singravel Yarn**

Traders, 2010 (4) RCR (Criminal) 426, contends that since, petitioner is

principal of the remaining accused, therefore, it has rightly been

summoned.

Having given thoughtful consideration to the rival submissions, this Court is of the view that the impugned complaint (P-1) filed by respondent against the petitioner is a gross abuse of the process of Court, inasmuch, learned counsel for the respondent is not able to show any documentary proof to prove inter se relation of the petitioner with any of the accused. Even, in para 7 of the complaint, respondent has specifically alleged that had he been aware of the dishonest intention of respondents No.1 to 7, he would not have advanced loan to them and received post dated cheque in question. Therefore, it is evident that no allegation in the complaint was levelled by respondent against the petitioner. Since, there is no relation of any type in between the petitioner and other accused, therefore, it cannot be made to suffer to face trial on a false complaint filed by respondent arraying him as an accused.

The facts and circumstances of the case referred to above are completely distinguishable from the facts and circumstances of the instant case. Therefore, no benefit of the same can be given to the respondent.

In view of discussion made above, impugned complaint dated 12.01.2017 (P-1) and summoning order dated 12.01.2017 (P-2) are quashed/set aside. Simultaneously, costs of ₹50,000/- is imposed upon the respondents to compensate the petitioner for the expenditure, it has incurred in pursuing and contesting this frivolous impugned complaint, which shall be deposited by respondent before the trial court within one month from the date of receipt of certified copy of this order, for onwards

payment to the petitioner, failing which, his complaint under Section 138 of the Act shall be dismissed by the trial court.

06.03.2019
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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:	Yes/No
whether reportable:	Yes/No