

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6843-2017

DATE OF DECISION:-06.03.2019

M/S TOYOTO KIRLOSKAR
MOTOR PVT LTD.

...PETITIONER...

V.

AABHA SIKRI

...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.13163 dated 20.12.2016, titled as "Aabha Sikri vs. M/s Chadha Motors and others" under Section 138 of the Act, 1881 (for short, "Act") and summoning order dated 20.12.2016 (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, she advanced a loan of ₹12,50,000/- on interest @ 1.40% per mensem for a period of 6 months to accused No.1, who in lieu thereof issued three post dated cheques, bearing Nos.113660 dated 01.08.2016, 113659 dated 08.08.2016 and 106558 dated

presentation 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 20.12.2016 (P-2).

Learned counsel for the petitioner contends that there is no relationship of principal and agent in between petitioner and any of the remaining accused. Other accused are strangers to the petitioner. Petitioner has falsely been implicated. In para No.7 of this complaint, no such averment is mentioned as is mentioned in another case. Therefore, in the absence of any evidence, impugned complaint dated 20.12.2016 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 other accused. No allegation was levelled by respondent against the petitioner in his complaint. 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 it 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 20.12.2016 (P-1) and summoning order dated 20.12.2016 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**