

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

CRM No.M-6873 of 2017 (O&M)

Date of Decision: March 06, 2019

Charan Singh @ Kala Punia and others

...Petitioners

VERSUS

Naresh Jain

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Navneet Singh, Advocate
for the petitioners.

Mr.Gaurav Jain, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of complaint RBT No.206 under Sections 420, 406, 506 and 120-B IPC filed by the respondent and summoning order dated 05.08.2016 passed by learned Judicial Magistrate Ist Class, Tohana along with all the subsequent proceedings arising out of the same.

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.

From the record, I find that Naresh Jain filed a complaint against Charan Singh @ Kala Punia, Rakul, Robin Malik, Tarsem Singh and

Amit under Sections 406, 420, 506 read with Section 120-B IPC. The brief averments of the complaint as noted down in the impugned order passed by learned JMIC, Tohana, are as under:-

“2. Brief facts of this complaint are that complainant is running a shop of commission agent in new grain market Tohana and accused Kala Punia remained friend of his son Vicky @ Anuj for the last many time and accused Amit is brother of Kala Punia. Both the accused namely Kala Punia and Amit used to lend money from the shop of complainant and did return the same within stipulated period. On 28.11.2013, accused Kala Punia came to the shop of complainant and demanded amount of Rs. 5,00000/- uptill 31.12.2013, as he has to execute sale deed of a plot. The complainant asked him to visit on 10.12.2013, and on that date(10.12.2013), accused Kala made a telephonic call to complainant and told that he is sending his brother Amit to the shop and asked to give the amount of Rs. 5,00000/- to him. After sometime accused Amit came at the shop and the complainant issued a self cheque no. 180912 of OBC Bank Tohana and entry regarding the same amount was made by Nasib Saini accountant of complainant in the bahi upon which Amit affixed his signatures. Said cheque was encashed by Amit from account no. 05505011000445 and Rs. 5,00000/- were withdrawn on 10.12.2013. On dated 31.12.2013, complainant as well as his accountant Nasib Saini went to Kala Punia and demanded for said amount. He replied that money has been received by Amit so demand should be made from him. Complainant approached Amit who also refused to pay the money. In this way both the accused neglected the demand of complainant and on dated 05.09.2014, accused Kala Punia filed a false complaint against son of complainant for abusing Kala Punia and firing, in connivance with other accused in order to grab the amount of Rs. 5,00000/- as matter of fact the firing took place through the licensed pistol of the son of complainant as the same was hooked in arm of chair and as soon as the chair fell down fire hit the plywood, at the shop of Leelu, owner of tea stall. At that time accused Kala Punia was not present and it came in the investigation of police that accused have falsely filed a complaint against son of complainant in order to grab his money. Thereafter, on 25.6.2014 complainant again demanded his money from Amit and Kala Punia who avoided the matter. Again on 04.07.2014, complainant asked for his money accused became furious and asked that no money is outstanding against them and if the complainant again demanded the money, he would be implicated in a false case or otherwise he would be killed. On 08.07.2014 panchayat was convened at Tohana in which complainant, his son and

accountant of complainant namely Nasib as well as accused were also present. Complainant asked Rakul, Manu, Amit and Tarsem that being witnessed the false complaint against son of complainant they replied that Kala Punia was their friend and they stood witness for the sake for their friendship. The matter was also reported to the police. But no action was taken by police. Hence, necessity arose to file the complaint.”

I have gone through the material contents of the complaint. There is no overt act against Rakul, Robin Malik and Tarsem Singh from the perusal of the complaint itself. It is also clear from the record that Amit was given a self cheque by the complainant, which is stated to have been encashed. Against Charan Singh @ Kala Punia, the only allegation is that he has asked for the loan. If it is taken that loan was given to Kala Punia, then Amit has no role. He had taken the cheque on behalf of his brother Kala Punia. If the amount is treated to have been given to Amit, then Kala Punia cannot be stated to be involved in any offence.

Secondly, the perusal of the complaint clearly shows that it is a money transaction and an amount of ₹5 lakhs, as per complainant, was given to Kala Punia through Amit, which they have refused to return on demand. The perusal of the complaint nowhere shows that intention of the accused was to cheat the complainant from the very beginning. Rather, it is admitted case of the complainant that Kala Punia was friend of his son Vikcy @ Anuj and he earlier used to borrow money from the shop of the complainant from time to time and used to return the same on the fixed date. As one of the necessary ingredient that there was intention of the accused to cheat the complainant from the very beginning, is missing, therefore, offence under Sections 406 or 420 IPC etc. is not made out. Rather, the dispute is purely of civil nature. Similarly, from the averments of the

complaint, in no way, it can be held that accused entered into criminal conspiracy or there is any overt act. Mere general allegations regarding threat etc. are not sufficient to take cognizance under Section 506 IPC.

In view of the above discussion, I find that filing of complaint in the present case 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. Complaint RBT No.206 under Sections 420, 406, 506 and 120-B IPC, summoning order dated 05.08.2016 and all subsequent proceedings arising therefrom, are hereby quashed.

March 06, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No