

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

CRM-M-38879-2019

Date of Decision:16.09.2019

Sanjeev Narula

...Petitioner

**Versus**

M/s Collage Estate Private Limited

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present:** Mr. D.M.Bhalla, Advocate for the petitioner.**ANIL KSHETARPAL, J.**

This petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short) has been filed against the interlocutory order dated 14.02.2017 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, affirmed in revision petition by the Court of Sessions.

The petitioner is an accused in a criminal complaint filed under Section 138 of the the Negotiable Instrument Act, 1881 (for short 'the Act of 1881). The petitioner is a Managing Director of accused company i.e. M/s Lilliput Kidswear Ltd. The company had taken a commercial premises on lease from the complainant vide lease agreement dated 11.07.2011. The cheque in question is alleged to be on account of payment of rent and maintenance. Since cheque was dishonoured, notice demanding payment was given which was addressed to all the three accused i.e. Company, Managing Director/petitioner and Arun Jain, authorised signatory of the cheque.

Since payment was not made, complaint was filed. Petitioners and the other co-accused were summoned vide order dated 19.04.2016. Efforts to secure the presence of the petitioners were successful only on 14.02.2017 i.e. after a period of 10 months. On the day petitioner appeared,

he was served with a notice of acquisition on granting bail.

Petitioners filed an application under Section 223 Cr.P.C. read with Section 204 (3) Cr.P.C for direction to supply copy of complaint. The Court got the copy of the complaint supplied (although in the order referred to as affidavit) and after giving opportunity of hearing to the petitioner, notice of acquisition was served. The order passed by the Court serving notice of acquisition was challenged before the learned court of Sessions, which has been dismissed.

This Court has heard the learned counsel for the petitioner at length.

It has been noticed that the accused tried to delay the trial of the case for one reason or the other. In the considered view of this Court, this was also one of the pretext set up by the petitioner to delay the trial.

Learned counsel for the petitioner has submitted that on the same day copy of the complaint was supplied and notice of accusation had been served, which was not proper and therefore, proper opportunity was not given.

On a pointed question from the court, learned counsel for the petitioner was unable to inform the court as to whether along with the summon, the petitioner was served with a copy of the complaint or not? In the application, which has been filed by the petitioner, the petitioner has only stated that he has not been supplied copy of the complaint. In any case a copy of the complaint was in fact supplied on being demanded. Still further, the application was filed only by petitioner herein. Remaining two accused i.e. the company and accused No.3 had not filed such application.

It is also not the pleaded case of the petitioner that he was not served with a

notice under Section 138 of the Act of 1881. Normally whenever summons are issued by the court, a copy of the complaint is attached. In absence of any pleadings or satisfactory material to prove that the copy of the complaint was not attached with the notice, it would not be appropriate to assume that the copy was not sent with the notice. Further, the copy has in fact been supplied. Petitioner, being Managing Director of the Company, was in knowledge of dishonour of the cheque. He further gained knowledge on notice under Section 138 of the Act of 1881. There is no application from the side of accused Nos.1 and 3. It is also not clear as to whether all the accused are represented by one counsel or separate counsels.

In view thereof, this Court finds that application filed by the petitioner was only to delay the trial. In any case, copy has already been supplied and petitioner would have the opportunity to defend the criminal prosecution against him.

Still further, interlocutory order passed by the Judicial Magistrate has been affirmed in revision. Section 397 (3) Cr.P.C. mandates that once a revision has been filed and the order is upheld, no second revision petition is maintainable. The present petition although has been filed under Section 482 Cr.P.C. is in fact the second revision under the garb of petition under Section 482 Cr.P.C. The exercise of power under Section 482 Cr.P.C. is discretionary and is to be used sparingly.

In the facts of the present case, this Court does not find any reason to entertain the petition. Hence, the present petition is dismissed.

**16.09.2019**  
**mks**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned: Yes/No  
Whether Reportable: Yes/No