

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

280

CRM-M-9295-2020
Date of decision: 06.03.2020

Amritpal SinghPetitioner

Versus

Rahul AhujaRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI.

Present : Mr. H.S. Brar, Advocate
for the petitioner.

Mr. Gurcharan Dass, Advocate
for the respondent.

ARUN KUMAR TYAGI, J. (ORAL)

1. The petitioner-accused has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') for setting aside order dated 01.10.2019 passed by learned Judicial Magistrate First Class, Ludhiana in COMA No. 2589 of 2014 titled as "Rahul Ahuja Vs. Amritpal Singh" filed by the respondent-complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the N.I. Act') whereby application filed by the petitioner-accused under Section 259 of the Cr.P.C. for converting the trial of the above mentioned complaint case from summons case to warrant case was dismissed.

2. Briefly stated, the facts relevant for disposal of the present petition are that the respondent-complainant filed above said complaint on the averments that the petitioner-accused executed agreement to sell dated 01.11.2013 agreeing to sell the property described therein for a

sale consideration of Rs. 9,25,00,000/- by furnishing power of attorney from Krishan Singh Jagdev, owner of 1/3rd share and having authority and consent of Kovalam Investment and Trading Company Limited, owner of 2/3rd share, to sell the property. The petitioner-accused received amount of Rs. 5,25,00,000/- from the respondent-complainant and on his instructions amount of Rs. 4,00,00,000/- was paid to Kovalam Investment and Trading Company Limited. The Sale Deed was to be executed on or before 15.12.2013. The petitioner-accused agreed to pay total amount of Rs.5,50,00,000/- (Rs. 5,25,00,000/- as refund of earnest money and Rs. 25,00,000/- as damages) in case of his failure to get the Sale Deed executed by 15.12.2013 and also issued post dated cheque dated 16.12.2013. Since the petitioner-accused failed to get the sale deed executed, the respondent-complainant presented the cheque. The petitioner-accused in connivance with the Bank got the cheque dishonoured vide memo dated 26.02.2014 with the remarks "DRAWERS SIGNATURES DIFFERS" whereas there was no sufficient balance in his account. The respondent-complainant served legal notice dated 22.03.2014 to which the petitioner-accused sent reply dated 05.04.2014. Preliminary evidence of the respondent-complainant was recorded and the petitioner-accused was summoned to face trial. During pendency of the trial, the petitioner-accused filed application under Section 259 of the Cr.P.C. for converting of the trial from summons case to warrant case which was dismissed by learned Judicial Magistrate First Class vide impugned order dated 01.10.2019.

3. Feeling aggrieved, the petitioner-accused has filed the

present petition.

4. Notice of the petition was issued to the respondent-complainant who appeared through Mr. Gurcharan Dass, Advocate.

5. I have heard Mr. H.S. Brar, learned Counsel for the petitioner-accused and Mr. Gurcharan Dass, learned Counsel for the respondent-complainant and gone through the relevant record carefully.

6. Mr. H.S. Brar, learned Counsel for the petitioner-accused has argued that the cheque in question was given only as security and there was no enforceable legal liability. The respondent-complainant had taken possession of the property in question from the petitioner-accused and the Sale Deed of property in question was executed by Kovalam Investment and Trading Company Limited in favour of Sumesh Chadha as nominee of the respondent-complainant but at the same time the respondent-complainant is claiming the cheque amount. The case involves dispute of civil nature regarding performance of the agreement to sell dated 01.11.2013. Several documents relating to tri-partite agreement are required to be produced and several witnesses have to be examined in defence which is not possible in summary trial. The trial of the present case ought to have been converted from summons case to warrant case. No prejudice will be caused to the respondent-complainant if the case is tried as warrant case whereas the petitioner-accused will suffer grave injustice if the case is summarily tried as summons case. The impugned order suffers from material illegality and the same may be set aside with direction for converting the trial into warrant case. In support of his arguments learned Counsel for the

petitioner-accused has placed reliance on judgment of Hon'ble Karnataka High Court in **M/s Leo Granex Vs. M/s Pavillion Granties 2010 (1) RCR (Criminal) 870.**

7. On the other hand, Mr. Gurcharan Dass, learned Counsel for the respondent-complainant has argued that the complaint was filed in the year 2014. The petitioner-accused has adopted dilatory tactics and delayed disposal of the case which ought to have been decided within 6 months from appearance of the petitioner-accused in the case. The petitioner-accused filed application under Section 259 of the Cr.P.C. but thereafter filed petition in the High Court for setting aside order dismissing application for re-calling of the respondent-complainant for his further cross-examination. The petitioner-accused cross examined the respondent-complainant in detail. The evidence of the respondent-complainant has already been closed. The petitioner-accused will have full opportunity to produce his defence evidence. No prejudice will be caused to the petitioner-accused in the eventuality of conclusion of trial of the case as summons case. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed. In support of his arguments learned Counsel for the respondent-complainant has placed reliance on judgments of Hon'ble Supreme Court in **Indian Bank Association and others Vs. Union of India and others 2014 (2) RCR (Criminal) 598** and Hon'ble Madhya Pradesh High Court in **Steel Tubes of India Vs. Steel Authority of India 2006 (1) RCR (Criminal) 757.**

8. Section 143 of the N.I. Act, which empowers the Judicial

Magistrate of the first class or Metropolitan Magistrate to try complaint cases under Section 138 of the N.I. Act summarily, reads as under :

“143. Power of Court to try cases summarily.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by the Metropolitan Magistrate and the provisions of Section 262 to 265 (both inclusive) of the said Code shall, as far as may be apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

'Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.”

9. Under Section 143 of the Cr.P.C. the complaint case involving offence punishable under Section 138 of the N.I. Act is triable summarily as summons case. However, the Judicial Magistrate of the first class or the Metropolitan Magistrate may, at the

commencement of or in the course of a summary trial, convert such summary trial as summons case into warrant case, if it appears to the Magistrate that either the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is for any other reason undesirable to try the case summarily. Such order of conversion of the trial can be passed only after hearing the parties. In case of such conversion in the course of trial witnesses already examined have to be re-called and the case has to be re-heard in the manner provided by the Cr.P.C. for trial of warrant case.

10. In the present case the petitioner-accused filed application under Section 259 of the Cr.P.C. for conversion of trial as summons case into warrant case. Section 259 of the Cr.P.C. reads as under:-

“259. Power of Court to convert summons cases into warrant cases :- When in the course of the Trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the magistrate that in the interests of justice the offence should be tried in accordance with the procedure for the Trial of warrant-cases, such magistrate may proceed to re-hear the case in the manner provided by this Code for the Trial of warrant-cases and may recall any witness who may have been examined.”

11. A comparative reading of Section 259 of the Cr.P.C. And Section 143 of the N.I. Act makes it clear that Section 259 of the Cr.P.C. permits conversion of summary trial as summons case into

warrant case during course of trial after commencement thereof where it appears to the Magistrate that in the interests of justice the offence should be tried in accordance with the procedure for the Trial of warrant-cases, while Section 143 of the N.I. Act permits such conversion at the commencement of or in the course of a summary trial where it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily.

12. No doubt, due to Section 143 of the N.I. Act starting with non-abstante clause and the N.I. Act being special enactment general provisions of Section 259 of the Cr.P.C. shall have no application in trial of the cases under Section 138 of the N.I. Act in view of statutory provisions made in Sections 4 and 5 of the Cr.P.C., but this academic distinction is not of much significance in the present case as Section 143 of the N.I. Act also makes similar provision for conversion of summary trial into warrant case.

13. In the present case the complaint was filed on 21.04.2014 and the petitioner-accused was summoned to face trial vide order dated 05.05.2014. Notice of accusation was served on him on 16.10.2014. The petitioner-accused filed application for stay of proceedings in the complaint case till decision of the civil suit which was dismissed by learned Judicial Magistrate First Class, Ludhiana vide order dated 28.11.2016. The petitioner-accused filed application under Section 311 of the Cr.P.C. for re-calling the complainant for his further cross

examination which was dismissed by learned Judicial Magistrate First Class, Ludhiana vide order dated 31.08.2017. Evidence of the complainant was closed on 27.09.2017 and case was adjourned to 17.10.2017 and then to 09.11.2017 and 17.11.2017 for recording statement of the petitioner-accused under Section 313 of the Cr.P.C.. The petitioner-accused filed application under Section 259 of the Cr.P.C. on 17.11.2017 which remained pending. The petitioner-accused filed **CRM-M-45277-2016 titled Amritpal Singh Vs. Rahul Ahuja** for setting aside of order dated 28.11.2016 which was dismissed by this Court vide order dated 05.02.2019. The petitioner-accused filed **CRM-M-45288-2016 titled Amritpal Singh Vs. Rahul Ahuja** for quashing of the complaint and summoning order which was disposed of by this Court vide order dated 05.02.2019 relegating the petitioner to raise all pleas before the trial Court. The petitioner-accused filed **CRM-M-41957-2017 titled Amritpal Singh Vs. Rahul Ahuja** on 03.11.2017 for setting aside order dated 31.08.2017 which was disposed of by this Court vide order dated 05.02.2019 with direction to give one and last opportunity to the petitioner-accused to cross examine the respondent-complainant. The respondent-complainant was accordingly cross examined in detail on 19.03.2019. Thereafter, the petitioner-accused pressed and sought disposal of his application for conversion of summary trial as warrant case after closing of evidence of the respondent-complainant when the case was to be taken up for recording of his statement under Section 313 of the Cr.P.C..

14. The petitioner-accused did not make any request for

conversion of summary trial into warrant case at the commencement of the trial and there is no plausible explanation for not filing of the application for conversion of summary trial into warrant case at the time of commencement of trial of the complaint case. It may be observed here that in view of the provisions of Section 143 (3) of the N.I. Act endeavour was required to be made to dispose of the present complaint case within 6 months from the date of appearance of the petitioner-accused. The petitioner-accused has deliberately adopted all kinds of dilatory tactics to delay the disposal of the case which fact disentitles him to the relief claimed. Further, it may also be observed here that the petitioner-accused participated in summary trial of the case and on dismissal of his application for recalling of the respondent-complainant for further cross-examination by learned Judicial Magistrate Ludhiana vide order dated 31.08.2017, filed **CRM-M-41957-2017 titled Amritpal Singh Vs. Rahul Ahuja** on 03.11.2017 for setting aside order dated 31.08.2017. It was thereafter that the petitioner-accused filed application under Section 259 of the Cr.P.C. on 17.11.2017 but even then the petitioner-accused did not seek disposal thereof which remained pending till disposal of above-said petition vide order dated 05.02.2019. In the facts and circumstances of the case due to his own election of filing petition before this Court for setting aside order dated 31.08.2017 which was disposed of by this Court vide order dated 05.02.2019 by giving him one and last opportunity to further cross examine the respondent-complainant and by further cross examining the respondent-complainant in compliance with the same,

the petitioner-accused is estopped from seeking conversion of summary trial into warrant case on the grounds which were known to him and available for claimed relief at the time of the commencement of the trial, even filing of the petition for setting aside order dated 31.08.2017 or in any case at the time of final hearing of the above-said petition.

15. Even otherwise the petitioner-accused is seeking conversion of the trial from summons case to warrant case on the ground that the dispute is predominantly of a civil nature involving the question of performance of tri-partite agreement to sell dated 01.11.2013 concerning Kovalam Investment and Trading Company Limited and Mr. Sumesh Chadha which requires examination of large number of witnesses and production of large number of documents due to which it is undesirable that the case be tried summarily as the petitioner-accused will not get full opportunity to produce the defence evidence. It is pertinent to observe here that on summary trial only substance of the evidence was to be recorded as required by Section 264 of the Cr.P.C. but a perusal of cross examination of the respondent-complainant extracted by the petitioner-accused in the petition shows that cross examination of the respondent-complainant was recorded in detail and even some of the questions put and the answers given were recorded in extenso. The petitioner-accused can submit lists of witnesses to be examined and the documents to be produced by him in his defence and file application specifically mentioning names of the witnesses for securing whose presence and the documents for production of which assistance of the Court is required. There appears

to be no legitimate ground for apprehension of denial of such assistance of the Court except where the Court comes to the conclusion that examination of such witness and production of such document is not relevant to just decision of the case and is intended for vexation and delay as being part of the dilatory tactics adopted by the petitioner-accused. Since, the petitioner is the only accused in the case and the question of his legally enforceable liability can be determined by allowing him to produce entire such defence evidence as is considered by the Court to be relevant for just decision of the case, no prejudice will be caused to the petitioner-accused if summary trial as summons case is allowed to conclude as such. On the other hand conversion of the summary trial as summons case into warrant case at this stage will cause unnecessary delay in disposal of the complaint case which is pending for disposal for more than 5 years.

16. The facts and circumstances of the present case are different from those of judicial precedent reported as **M/s Leo Granex Vs. M/s Pavillion Granties 2010 (1) RCR (Criminal) (Karnataka High Court) 870**, relied upon by learned Counsel for the petitioner-accused, as in that case trial of complaint case under Section 138 of the N.I.Act involving dishonour of cheque for Rs.8.10 Crores was converted into warrant case due to involvement of high stakes and dispute being of civil nature requiring examination of number of witnesses and production of multiple documents **at the commencement of the trial**. Therefore, the observations therein are not of much help to the petitioner-accused.

17. In these facts and circumstances of the case no ground for conversion of the trial into warrant case is made out and the application filed by the petitioner-accused has been rightly dismissed by learned Judicial Magistrate First Class. The impugned order does not suffer from any illegality to warrant interference by this Court in exercise of its inherent power under Section 482 of the Cr.P.C.

18. The petition, being devoid of any merit, is dismissed accordingly with no order as to costs.

06.03.2020

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No