

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

CRM-M-3697-2020
Date of Decision: 14.07.2022

Amarjit Singh

...Petitioner

Versus

Gurcharan Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Amandeep Saini, Advocate, for the petitioner.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the orders dated 30.01.2017 (Annexure P.1) passed by Addl. Chief Judicial Magistrate, Kurukshetra and the order dated 21.08.2019 passed by the learned Sessions Judge, Kurukshetra, whereby revision, against the order dated 03.01.2017, was dismissed.

Learned counsel for the petitioner would vehemently argue that while passing the impugned order, both the Courts below fell in error of law, inasmuch as the settled position in law that at the time of framing of the charge, only a prima-facie, case is to be seen. It is further argued that there being sufficient material on record in the form of the pre-charge evidence against the accused, passing of the impugned orders defeats the rationale and, therefore, the impugned orders are liable to be set aside.

Still further, while referring to the testimony of the witnesses CW1 to CW5 examined by the complainant in pre-charge evidence, it is argued that the guilt on the part of the accused, was expressly stated in the said testimony and, therefore, a threadbare examination by the trial Court, of the said testimony at the stage of framing of the charge, is not sustainable. The said approach of the

trial Court, though vehemently challenged before the revisional Court, yet to no avail.

I have heard learned counsel for the petitioner and have also gone through the impugned orders.

There is no debate over the statutory provisions as also the judicial pronouncements on the issue at hand that at the stage of framing of the charge, the Court is to see, whether or not a prima-facie, case is made out. However, the power of the Court to sift the evidence, at the time of framing of the charge, to find out whether or not such a case is made out, cannot be called in question.

The complainant alleges that respondent No.1- Gurcharan Singh, got opened the Bank Account of the petitioner and his brothers; had got issued the cheque books; and handed over the said cheques to other co-accused, who in turn had filed complaints under Section 138 of the Negotiable Instruments Act, 1881 against the complainant and his two brothers; that the said complaints were dismissed and that respondent No.1 is guilty of forging and fabricating the cheques in connivance with the co-respondents.

The learned trial Court, while discharging the respondent vide order dated 30.01.2017, had noticed that the original of the cheques were not produced by the complainant; that the complainant did not examine any handwriting expert in order to establish a, prima-facie, forgery; that no Bank official, in support of the alleged opening of the bank account(s) was examined; that the complainant and his brothers had continued operating the said accounts and doing transactions therein/therefrom; that even the report Exhibit C.2, would show that the dispute was with regard to the interest money, which was civil in nature and the same was pending before the Court and that were material contradictions in the testimony of the witnesses examined by the complainant.

As noticed above, the learned Sessions Judge, Kurukshetra, vide order dated 21.08.2019 dismissed the revision filed by the petitioner.

The petitioner in order to establish a prima-facie case against the respondents under Sections 420, 468 read with Section 120-B IPC, was required to lead cogent and convincing evidence. Learned counsel for the petitioner could not point out any illegality in the orders passed by the Court below. The only emphatic submission that the trial Court ought to have framed charges, as at that stage, only a prima-facie, case was to be seen, looks convincing at the first instance, but if the power vested with the Magistrate under Section 245(1) Cr.P.C., are seen, the said plea also falls flat. Thus, it could not be seen that while passing the impugned orders, the Courts below, have committed any illegality.

No other point has been urged.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

14.07.2022
ds

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No