

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

CRM-M No.43568 of 2021 (O&M)

Date of Decision: 11-01-2022.

Subhash Chand Sharma

.....Petitioner

Versus

Sanjay Thakran

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Aman Pal, Advocate
for the petitioner.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C for seeking the quashing of the order dated 05.02.2020 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Gurugram (for short 'the trial Court') in NACT/1290/2014 dated 03.03.2014 titled as "*Sanjay Thakran vs. Subhash Chand Sharma*" whereby the said complaint case has been ordered to be tried as summons case and also of the judgment dated 04.10.2021 (Annexure P-2) passed by learned Additional Sessions Judge, Gurugram, (for short 'the Revisional Court') dismissing the Criminal Revision as preferred by him (petitioner) to assail the order Annexure P-1.

2. As per the brief factual-matrix culminating in the filing of the present petition, the respondent-complainant (for short 'the complainant') filed the above-said Criminal Complaint case against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI

Act') with the allegation qua the dishonour of the cheque worth Rs.1,42,00,000/- as issued by him (petitioner). After recording the preliminary evidence, the trial Court summoned the petitioner. Then, after hearing learned counsel for both the parties, the trial Court passed the impugned order Annexure P-1 for serving the notice of accusation to the petitioner under the above-said provisions and for trying the said Complaint Case as a summons case. The petitioner assailed the said order by filing the Criminal Revision but the Revisional Court has upheld the same while dismissing the revision petition vide the impugned judgment Annexure P-2 and feeling aggrieved by the same, the petitioner has preferred this petition.

3. I have heard learned counsel for the petitioner in this petition at the preliminary stage and have also perused the file thoroughly.

4. Learned counsel for the petitioner has contended that the trial Court has passed order Annexure P-1 for the trial of the said Criminal Complaint case as summons case without recording any cogent reasons for the same and the Revisional Court has also misconstrued the provisions as contained in Section 143 of the NI Act while passing judgment Annexure P-2 and therefore, the same are not legally sustainable and are liable to be quashed. To buttress his contentions, he has placed reliance upon **Suo Motu Writ Petition (Crl.) No.2 of 2020 In Re: Expeditious Trial of Cases under Section 138 of NI Act 1881 Decided on 16.04.2021(SC); M/s Meters and Instruments Private Limited & Anr. vs. Kanchan Mehta 2017(4) R.C.R. (Criminal)476 (SC); Tripati Vyas vs. State of Rajasthan**

and another 2013(4) R.C.R.(Criminal) 110 (Rajasthan) and Swaminatha Pillai vs. Mr. A.Senthil Kumar 2013(5) R.C.R. (Criminal) 429 (Madras).

5. However, this contention is devoid of any force because the relevant part of the impugned order Annexure P-1, as passed by learned trial Court, reads as under:-

“x x x x x

At this stage, facts of the case perused. Upon perusal of the file, it appears that nature of the case is such that sentence of imprisonment for a term exceeding one year may be passed in the present case and therefore, it is undesirable to try the case summarily and it is further necessary to do so to avoid the bar of Section 326(3) Cr.P.C. Accordingly, the case shall now be tried as summons case. Now to come up on 26.02.2020 for complainant’s evidence.”

6. The second proviso appended to Section 143 of the NI Act provides as under:-

“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 and rehear the case in the manner provided by the said Code”.

7. From the afore-cited contents of order Annexure P-1, it

becomes crystal clear that the trial Court has categorically observed therein that the nature of the case is such that the sentence of imprisonment exceeding one year may be passed. In Para 20 of judgment Annexure P-2, the Revisional Court has also specifically observed as under:-

“x x x x x

After having considered the averments made in the complaint that matter in dispute pertains to dishonour of the cheque amounting to Rs.1,42,00,000/-, the trial Magistrate has rightly opined that nature of the case is such that sentence of imprisonment for a term exceeding one year may be passed in the present case and, therefore, it is undesirable to try the case summarily and opted for trial of the case as summons case.”

8. Keeping in view the huge amount of the cheque in question, such observations cannot be held to be unjustified at all and rather, when tested on the touch-stone of the above-quoted provisions as contained in the second proviso appended to Section 143 of the NI Act, it emerges that order Annexure P-1 and judgment Annexure P-2 do fulfil the pre-requisites, as envisaged therein, to exercise the power to decide the mode of the trial of the Complaint Case under Section 138 of the NI Act.

9. The observations as made in ***Suo Motu Writ Petition (supra)***, ***M/s Meters and Instruments Private Limited & Anr. (supra)***, ***Tripati Vyas (supra)*** and ***Swaminatha Pillai (supra)*** do not further the cause of the petitioner because the facts and circumstances of the present case are explicitly distinguishable from those of the cited above. In ***Suo Motu Writ***

Petition (supra), the Apex Court has asked the High Courts to issue practice directions to the Magistrates to record the reasons before converting the trial of the Complaints under Section 138 of the NI Act from summary trial to summons trial in exercise of the power under the proviso to Section 143 of the NI Act and in the instant case, the trial Court has recorded the specific reasons for opting to try the said Criminal Complaint as a summons case.

10. In ***M/s Meters and Instruments Private Limited & Anr. (supra)***, the Hon'ble Supreme Court has held that the normal rule for the trial of the cases under Chapter XVII of the NI Act is to follow the summary procedure and the summons trial procedure can be followed where the sentence exceeding one year may be necessary taking into account the fact that the compensation under Section 357(3) Cr.P.C with sentence of less than one year will not be adequate, having regard to the amount of the cheque, conduct of the accused and other circumstances. In the case in hand also, the afore-said amount of the cheque is a huge one. Moreover, a bare reading of Annexure P-3, i.e the copy of the Revision petition preferred by the petitioner before the Revisional Court, shows that he has disputed the very factum of his liability to pay any amount to the complainant. It being so, the trial of the said Criminal Complaint as summons case would, rather, facilitate the logical adjudication of the said dispute between the parties by the trial Court while appreciating and evaluating the evidence that may be led by them on the record in support of their respective contentions in this regard.

11. In *Tripati Vyas (supra)*, all that has been held is that the Judicial Magistrate would be at liberty to try a complaint case as summons case if it appears that the sentence of imprisonment for a term exceeding one year may have to be passed and he may further hold summons trial when he finds it undesirable to try the case summarily and then, he would record the order after hearing the parties. As discussed earlier also, the trial Court has categorically observed that it appears that the sentence of imprisonment for a term exceeding one year may be passed and the Revisional Court has also observed that keeping in view the huge amount involved in the case, the opinion of trial Court is correct and this Court also does not find any cogent reason to record a different opinion in this regard.

12. Lastly, in *Swaminatha Pillai (supra)* also, it has been observed that the adoption of the procedure contemplated for a summon case should be the result of a conscious decision of the Court and not mere happen chance and in the present case, as mentioned in the preceding paragraphs, the trial Court has passed the impugned order while advancing plausible reasons for the same.

13. As a sequel to the fore-going discussion, it follows that the present petition, being *sans* any merit, deserves dismissal. Resultantly, the same is hereby dismissed accordingly.

11-01-2022.

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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes