

**CRM-M No.57609 of 2022 and
CRM-M No.57660 of 2022**

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

**CRM-M No.57609 of 2022
Date of decision : 13.12.2022**

Anshuman Vashishata Petitioner

versus

Bhuvnesh Mahajan Respondent

CRM-M No.57660 of 2022

Bhupinder Wasu Petitioner

versus

Bhuvnesh Mahajan Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Amit Jhanji, Senior Advocate with
Mr. A.P.S.Sehgal, Advocate and
Ms. Zaheen Kaur, Advocate
for the petitioner.

Mr. Dinesh Mahajan, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

By this common order, I intend to dispose off two petitions filed seeking quashing of complaint No.450 of 2021 dated 14.09.2021 (Annexure P-2) titled 'Bhuvnesh Mahajan Vs. Sushant Kohli & ors.' under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NIA') read with Sections 420, 406, 409, 120-B, 34 & 201 IPC and summoning order dated 17.10.2022 (Annexure P-1).

Respondent filed aforesaid complaint against the petitioners in the present two petitions and one Sushant Kohli, wherein he claimed that :-

3) That, in month of June 2019, Complainant gave an amount of RS. 250000/- as per demand of Accused for making a fixed FDR in some repudiated bank, as Accused was in dire need of same because Accused told to Complainant that job of Accused is in danger and Accused directed by his senior Officers to get a big amount of cash for making a fixed FDR under agency code of Accused, otherwise Accused shall be fired from his some private job. It is further submitted that the Accused No. 2 alongwith Accused No. 3 visited the premises of Complainant and received the cash amount of Rs. 250000/- for registering the policy (Insurance Policy) in the presence of Accused No. 1. The Accused No. 1 and 2 counted the cash amount and Accused No. 2 and 3 and keep the said cash amount into their possession and also told that into a simultaneous voice, that the policy will be in the hands of complainant into a week of into 15 days maximum and Accused No. 1 convinced complainant in his begging conditions, to register an FDR in the name of Complainant and Accused promised that a registered fixed FDR will be reached by post into house of complainant in the shape of valid and genuine document, within a week or in 15 days. After that the above said Accused No. 1 made pretext by saying that the Accused No. 2 and 3 were not in his contact now for some period and the policy will be registered in some few days. It is also pertinent to mention here that all of the Accused persons have got signatures on some documents with regard to their policy, and they told that they will fill those documents per their requirements for their policy registration, after that they left the premises and those documents are still into the custody of Accused persons respectively. But after the lapse of 2 ½ months complainant asked to accused No.1, for the registration of said FDR, but made several pretexts for the same, and demanded some more time for registration of FDR and after lapse of one month complainant visited to premises of Accused No. 1 and again requested Accused No. 1 to get the registered FDR or to return the said amount of RS. 250000/-, but all in vain and after that Accused No. 1 promised it to be returned within two months as Accused were not able to repay the cash amount and after the lapse of two months when the complainant asked Accused No.1 for the return of above said amount for several times and but the Accused No. 1 made one pretext after another to complainant and Accused No. 1 kept the complainant at an arms' length and even Accused No. 1 always tried to get rid of Complainant regarding the non-payment of above said amount. But ultimately Accused No.1 visited to complainant with the help and intervention of the some common friend of complainant, in the third week of month of May 2021 and Accused issued a cheque no. 977714 to the

complainant from his account no. 157508350401 of Rs. 250000/- (Rs. TWO Lakh fifty thousand only) dated 04-06-2021, payable at INDUSLND Bank, Branch GT road, Gurdaspur at the premises of complainant at Distt. Courts Gurdaspur Tehsil & Distt. Gurdaspur, to discharge his legal liabilities against complainant with regard to the payment of total amount of i.e. RS. 250000/-. The cheque was signed by Accused No.1 and Complainant accepted the same in good faith at the premises of complainant at Distt. Courts Gurdaspur Tehsil & Distt. Gurdaspur. In fact the cash amount has been misappropriated by the all of the Accused persons after creating a illegal criminal conspiracy with their illegal assistance of the Accused No.2 and 3, who both are respectable persons of the society and having a good reputation into their department, but to grab the money into this way or that way they misappropriated the said cash amount of Rs. 250000/- and after that they are now even facing the complainant to refund the money even. The complainant gave them the cash amount to register the policy, but they intentionally, willfully, illegally cheated the complainant and misappropriated the said cash amount and they make fool of complainant. Even the Accused persons are making threats by saying that they will utilize the documents as per their own desires and wishes, which were signed by complainant at the first instance for registering the policy.

4) That, complainant deposited the above said cheque on 05-06-2021 in his bank account i.e. EQUITAS Small Savings Bank, Branch Gurdaspur, Gurdaspur for clearance, in his own account for payment of amount of Rs. 250000/- (RS. TWO Lakh Fifty thousand Only) which was returned dishonoured with remarks "DORMANT ACC" by above said bank on dated 05-06-2021, vide memo dated 05-06-2021 and after that the Complainant again visited the premises of Accused No. 1 and tried to contact Accused No.2 and 3 at Amritsar, but all in vain and after that Complainant again tried to contact Accused No. 1 and he told that the complainant will deposit the said cheque again into his bank and the same will be encashed definitely and as per the direction of Accused No.1, complainant again deposited the said cheque into his bank again and the same dishonoured again with the same memo of having remarks DORMANT ACC vide memo dated 25-06-2021 and which was returned to complainant on dated 28-06-2021.

5) That, after few days from 30-06-2021 complainant again approached to Accused No.1 with the above said fate of the cheque above said and requested Accused No.1 to pay the said amount, but all in vain. Accused

Persons above said has cheated complainant willfully and knowingly.

6) That, Accused No.1 knowingly and willingly, issued the above said cheque to complainant, which was in his knowledge to the effect that there are not sufficient funds in his bank account and Accused No.1 issued the present cheque which was dishonoured on effective occasion with the illegal fate and by doing so Accused no.1 have made himself liable to be treated U/S 138 of NI Act and 420, 406, 409, 120-B, 34 IPC with the help of other Accused persons No. 2 and 3, and also Accused persons have harassed Complainant by doing so Accused persons have made himself liable to be treated under the provision of Section 138 of NI ACT and civil proceedings can also be launched against Accused persons, as Accused persons have committed the offence under the provisions of N.I. Act.”

Thus the gravamen of the complaint is that the complainant paid an amount of Rs.2,50,000/- in cash for purchase of insurance policy to the petitioners and co-accused Sushant Kohli. However, when the policy could not be registered in the name of the complainant, on being confronted accused No.1, admitting his liability issued cheque for the said amount to the complainant. On presentation the said cheque was dishonored with the remarks “DORMANT ACCOUNT”. The complainant thus alleges cheating at the hands of the petitioners and the co-accused-Sushant Kohli and offence punishable under Section 138 of the NIA against accused No.1. Trial Court vide order dated 17.10.2022 summoned accused-Sushant Kohli for offence punishable under Section 138 of the NIA and Section 420 read with Section 120-B IPC. The present petitioners have been ordered to be summoned for offence punishable under Section 420 read with Section 120-B IPC.

Learned senior counsel for the petitioners while assailing the impugned complaint and the summoning order has vehemently argued that a strange situation has arisen owing to the impugned order as one set of the accused i.e. the present petitioners have been summoned for offences qua

which Code prescribes warrant trial whereas on the other hand Sushant Kohli has been summoned for offence punishable under Section 138 of the NIA which prescribes summons trial. He submits that if at all the petitioners could have been summoned the same could be only by way of separate complaint. He submits that even on the merits of the case, the complaint cannot be sustained. It has been asserted that accused No.1- Sushant Kohli is not the employee of the Bank and thus he has no connection with the present petitioners. Present petitioners who are enjoying high offices as Cluster Head and Circle Head respectively cannot be believed to have accompanied accused No.1 to the complainant to sell insurance policy. He further contends that merely on the oral testimony of two witnesses, learned trial Court has exercised jurisdiction under the Code which is in the teeth of law laid down by Apex Court in the case of ***M/s Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., 1998(5) SCC 749***, wherein the Apex Court held as under :-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Per contra, Mr. Dinesh Mahajan, Advocate appearing for the respondent submits that there is nothing unusual in the process followed by the trial Court and there is no infirmity in the summoning order. As per the settled proposition, a person guilty of offence punishable under Section 138 of the NIA can well be summoned for offence punishable under Section 420 IPC. Reference has been made to order passed by Bombay High Court (Nagpur Bench) ***in Manohar S/o Nanaji Balpande (died) through Lrs. Smt. Leela wd/o Manohar Balpande and ors. Vs. Haribhau S/o Govindrao Hatwar & ors., 2011(24) RCR (Criminal) 593***, wherein the Bombay High Court while dealing with the question with respect to summoning of an accused under Section 138 of the NIA along with Section 420 of the IPC held as under :-

“Section 143 of the N.I. Act starts with non-obstante clause so that a trial Magistrate may proceed to try the offence punishable under section 138 of the N.I. Act in a summary manner as provided for under Sections 262 to 265 of the Criminal Procedure Code. The proviso to section 143 enables the trial Magistrate if he considers the nature of the case as such punishable with sentence of imprisonment for a term exceeding one year, the Magistrate may proceed to examine/recall witnesses and hear the case accordingly, either by following the procedure for summons case or warrant case, as the need may be, according to law. The intention of the legislature is to ensure that the trial for an offence punishable under section 138 of the N.I. Act ought to be heard expeditiously, preferably de die in diem i.e. by day-to-day hearing so as to complete the same within a period of six months from the date of filing of the complaint. The trial Magistrate, therefore, shall endeavour to decide to try such case in a summary manner or in a manner if need be as summons case or warrant case considering the nature and gravity of the accusation in the complaint.

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it must have been left to the judicial discretion to the trial Magistrate to try the case in a summary manner or as a summons case or if needed as a warrant case as the case may be, depending upon the nature and gravity of the offence appearing in the case. The learned trial Magistrate can

adopt special procedure provided in the N. I. Act which operates notwithstanding anything contained in the Criminal Procedure Code for trial of offence punishable under section 138 of the N.I. Act If according to trial Magistrate, the accusations in the complaint made under Section 420 of the Indian Penal Code is also required to be tried, the trial Magistrate can take appropriate steps in this regard to try the case according to law. If the complaint alleged offence punishable under Section 420 of the Indian Penal Code as well, apart from section 138 of the N.I. Act, the trial Magistrate can decide to try the case by adopting procedure in accordance with law, either as a summons case or warrant case, as the case may be.”

I have heard learned counsel for the parties and have gone through the records of the case.

Though at the first blush it seems that the learned trial Court has jumbled with the procedure yet on the careful perusal of the summoning order it is evident that the present petitioners have been summoned for offence punishable under Section 420 read with Section 120-B IPC whereas the 3rd accused has been summoned for offence punishable under Section 138 of the NIA as well. Thus the paradox as projected by the learned senior counsel in fact does not exist. Trite it is where an accused has been summoned for offence prescribed in summons case and for the offence for which warrant-case is prescribed, the procedure of warrant case shall be followed which also has to be followed *vis-a-vis* the present petitioners.

Coming on to the second limb of the argument raised by the learned senior counsel for the petitioners there cannot be any dispute with respect to the proposition as laid down in ***M/s Pepsi Foods Ltd. & Anr.'s case (supra)*** that summoning of a person to face criminal proceedings is a serious matter and the Court at the time of summoning must apply its mind to carefully scrutinise the evidence brought on record. The aforesaid test

when applied to the present case it is evidently clear that the facts alleged by the petitioners do find prima-facie corroboration in form of a cheque issued by accused No.1. At the time of summoning the test prescribed is prima-facie case. The Court at this stage is required to see as to whether the allegations levelled in the complaint if proved would constitute offence or not. Trial Court while summoning the present accused held that :-

“7. Firstly, it is to be seen, whether all the three accused committed an offence punishable under Section 138 of Negotiable Instrument Act. Perusal of cheque reveals that only accused Sushant Kohli has signed the cheque. The name of other co-accused has not come on the cheque. Therefore, accused Shushant Kohli is ordered to be summoned to face trial under Section 138 of Negotiable Instrument Act due dishonour of cheque, because after issuance of legal notice by the complainant, his payment of Rs.2,50,000/- has not been made.

8. It is the case of complainant that accused No. 1 along with accused No. 2 and 3 received cash amount Rs.2,50,000/- from him on the allurements of making of fixed FDR for giving big amount to him under the agency code of accused. It is also the case of complainant that he gave the cash amount to register the policy, but all the three accused misappropriated his amount for their own use. In view of the allegations set out in the complaint as well as in the testimony of complainant, there are sufficient grounds to proceed against all three accused for cheating the complainant on receiving amount mentioned above. All three accused are ordered to be summoned under Section 420 read with Section 120-B of Indian Penal Code.

9. There is no sufficient evidence for summoning the accused under Section 409 of Indian Penal Code for want of evidence regarding the government jobs of the accused. Therefore, accused are not summoned for the said offence.

10. So far as offence under Section 406 of Indian Penal Code is concerned, accused have been summoned under Section 420 of Indian Penal Code and therefore, by taking into consideration antithesis of both sections to each other, accused are not summoned for the said offence.”

In view of the aforesaid facts and the settled proposition of law that while exercising jurisdiction under Section 482 Cr.P.C. this Court is not

required to conduct mini trial, in the considered opinion of this Court, present petitions are without merit and the same are thus ordered to be dismissed.

Needless to say that anything observed herein shall not be construed as an expression of opinion on the merits of the case.

13.12.2022
Pooja sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No