

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-24148-2016 (O&M)
Date of decision: 15.03.2023

SARWAN SINGH

....Petitioner

Versus

MOHAN AND ANR

...Respondents

CRM-M-25230-2016 (O&M)

SARWAN SINGH

....Petitioner

Versus

JATINDER CHAUDHARY AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr.Ishan Cooner, Advocate for the petitioner

AMAN CHAUDHARY. J.

This common order shall dispose of above-mentioned two petitions,
as they are arising out of the same complaint.

Present petitions have been filed under Section 482 CrPC for
quashing of the impugned order dated 07.05.2016, Annexure P-1, passed by
learned Additional Sessions Judge, Panchkula, vide which the order dated
16.04.2015, passed by the trial Court, was set aside.

Briefly put the facts of the case are that respondent-Jatinder

Chaudhary took the complainant-petitioner to a bank at Panchkula in the year 2005 under the impression that he would help out the complainant-petitioner in opening a bank account. At that time, complainant-petitioner signed numerous documents as desired by the respondent-Jatinder Chaudhary. With the passage of time, relations between the complainant-petitioner and the respondents turned acrimonious in nature and on this, complainant-petitioner asked the respondents about the account of money, but they put off the matter on one pretext or the other. That if the accused-respondents had represented true facts and had they not exercised deceit or fraud upon the complainant-petitioner to the effect that purchaser of the land of complainant-petitioner would not make payment of sale price in cash and they would make such payment through cheques, complainant-petitioner would have never accompanied the respondents-accused persons specifically respondent-Jatinder Chaudhary for opening of bank account and further to deliver him under inducement signed blank cheques. That respondent-Jatinder Chaudhary in-conspiracy with the remaining respondents-accused persons forged and fabricated a false cheque bearing No.242362 dated 1.7.2011 entering an amount of Rs.3,00,000/- stated to be drawn on ICICI Bank, Panchkula. Hence, the present complaint for initiating criminal proceeding under sections 403/406/409/418/419/ 467/468/471 read with section 120-B of the Indian Penal Cod, 1860.

In his preliminary evidence, the complainant-petitioner has examined the following witnesses:-

CW1 Sarwan Singh (Complainant)
CW2 Joginder Singh.
CW3 Pritam Singh

Thereafter, the present complaint was sent to police for investigation

under section 202 Cr.P.C. and the said report was received in the court on 28.8.2014.

After hearing the learned counsel for the petitioner-complainant and in view of facts and circumstances, the learned trial Court vide order dated 16.04.2015 had summoned the accused persons-respondents for the commission of offences punishable under Sections 420, 467, 468, 471 read with Section 120-B of IPC.

Thereafter, the respondent-Mohan preferred a revision petition under Section 397 CrPC against the order dated 16.04.2015 passed by the learned trial Court, which was accepted by learned Additional Sessions Judge-I, Panchkula and the summoning order dated 16.04.2015 was set aside.

Learned counsel for the petitioner submits that the learned revisional Court has committed a grave error while setting aside the order dated 16.04.2015 passed by the trial Court, summoning the accused-respondents for commission of offences under Sections 420, 467, 468, 471, 120B IPC. Accused-Jatinder Chaudhary in connivance with other co-accused forged and fabricated a cheque bearing No.242362 dated 01.07.2011, which was never issued by the complainant-petitioner. In support of his complaint, he has led the preliminary evidence and the learned trial Court after evaluating the same, has rightly summoned the accused-respondents.

Despite service none has appeared on behalf of the respondents-accused.

Heard and perused the record.

From perusal of the record, it transpires that on similar set of allegations, the complainant-petitioner had filed a complaint dated 10.12.2011

against respondent- Jitender and other co-accused, which was dismissed by learned Judicial Magistrate, 1st Class, Panchkula vide order dated 16.02.2015 and in the revision filed against the said order, the petitioner remained unsuccessful. It is also pertinent to notice here that petition filed against the aforesaid orders before this Court has also been dismissed vide order dated 22.2.2023 passed in CRM-M-8719-2016, which reads thus:

“As is apparent from the judgment of the Courts below that the complainant had failed to establish entrustment, which under Section 405 IPC is pivotal to constitute an offence, as such, the accused –respondents could not be held liable for criminal breach of trust punishable under Section 406 of the Penal Code, which envisages dishonest misappropriation of property entrusted, as has been held by Hon’ble The Supreme Court of India in the case of **Vijay Kumar Ghai vs. State of West Bengal** (2022) 7 SCC 124.

That apart, the complainant having instituted yet another complaint against the accused on the same set of allegations was rightly found by the revisional Court to be in the teeth of Section 300 CrPC.

In the case of **Poonam Chand Jain and Anr vs Fazru** (2010) 2 SCC 631, the question which cropped-up for determination by Hon’ble The Supreme Court was whether after an order of dismissal of complaint has attained finality, the complainant can file another complaint on almost identical facts without disclosing in the second complaint the fact of either filing of the first complaint or its dismissal. It was observed that, “Almost similar questions came up for consideration before this Court in the case of **Pramatha Nath Talukdar and another vs. Saroj Ranjan Sarkar** - (AIR 1962 SC 876). The majority judgment in **Pramatha Nath** (supra) was delivered by Justice Kapur. His Lordship held that an order of dismissal under Section 203 of the Criminal Procedure Code (for short ‘the Code’) is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. This Court explained the exceptional circumstances as (a) where the previous order was passed on incomplete record (b) or on a misunderstanding of the nature of the complaint (c) or the order which was passed was manifestly absurd, unjust or foolish or (d) where new facts

which could not, with reasonable diligence, have been brought on the record in the previous proceedings. This Court made it very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full consideration of the case, the complainant should be given another opportunity to have the complaint enquired into again. In paragraph 50 of the judgment the majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record. This Court very clearly held that it cannot be settled law which permits the complainant to place some evidence before the Magistrate which are in his possession and then if the complaint is dismissed adduce some more evidence. According to this Court such a course is not permitted on a correct view of the law. (para 50, page 899)”

It was held that, “Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint which is substantially new and not disclosed in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the application of the first complainant. In fact such a case could not be made out since the facts in both the complaints are almost identical. Therefore, the second complaint is not covered within exceptional circumstances explained in *Pramatha Nath* (supra). In that view of the matter the second complaint in the facts of this case, cannot be entertained.”

In the case in hand, it has been found as a matter of fact that the previous complaint, which was instituted, was on the same set of allegations as the one from which the revision had arisen. Nothing was and has been shown that it fell within the parameters as laid down in the case of **Pramatha Nath Talukdar** (supra).”

In view of the above, this Court finds no illegality or infirmity in order dated 07.05.2016 passed by the learned Additional Sessions Judge,

Panchkula, which calls for interference, as such the present petitions are hereby dismissed being bereft of merit.

A photocopy of the judgment be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

March 15, 2023

M.Kamra

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