

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-8719-2016 (O&M)
Date of decision: 22.02.2023

SARWAN SINGH

....Petitioner

Versus

MUKESH CHOPRA & ORS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ishan Cooner, Advocate for
Mr. Jagram Singh Cooner, Advocate for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for quashing of order dated 16.02.2015, Annexure P-2 passed by learned JMIC, Panchkula and order dated 13.11.2015, Annexure P-3 passed by learned Additional Sessions Judge, Panchkula.

Briefly put the facts of the case are that the complainant stated that he is an illiterate person and knows to write his name only. Respondent No.2 is his relative and respondent No.3 is known to respondent No.2. The accused-respondents had cordial relations with the complainant and used to rely upon the advice of the respondents. The complainant sold and purchased different property at Himachal with the help of respondent No.3. Respondent No.3 told him that purchasers of the complainant would not make payment in cash and they will transfer the amount through cheques in

his bank account, therefore, a bank account was opened by complainant with the help of respondent No.3. Respondent No.3 got his signatures on certain blank documents and other papers. A cheque book was issued and accused procured his signatures on blank cheques and same were retained by the accused. In the year 2004-05 the accused-respondents introduced accused Mohd. Iqbal, Advocate to the complainant. Friendly relations developed between respondent No.2 and complainant. Respondent No.1 also obtained signatures of the complainant on number of blank papers on the pretext that he will be requiring them for preparing applications and petitions on his behalf. However, their relations turned sour. Complainant demanded money and also asked them to hand over the blank cheques and blank papers but the accused refused to do so.

Learned counsel for the petitioner submits that the Courts below did not appreciate the evidence produced by the petitioner and had passed the impugned orders. He submits that the petitioner has given complete details of events in the complaint and the role played by the respondents and how they had retained various cheques. He submits that the learned Courts below did not consider that at the time of summoning the accused, the Court has only to see a prima facie case against the respondents-accused. He further submits that there are other illegalities and irregularities in the impugned orders and the same are liable to be quashed.

Heard.

It is apposite to refer to the order of the learned trial Court, passed while dismissing the complaint of the petitioner, by observing thus:-

“After perusing the documents on file and after going through the statements of complainant and his witnesses this court has arrived at a conclusion that no offence has alleged by the complainant is made out in the present case. The complainant has alleged that the accused have forged documents against him but forgery has not been established by the complainant. The complainant has himself stated that he signed certain blank cheques and blank papers but no such document, as alleged to be forged, has been brought on record by the complainant. As per offence under Sections of misappropriation, the complainant has failed to establish that there was entrustment of any property by him. Therefore, offence under Section 403, 406 and 409 of IPC have not been prima facie established. Likewise element of cheating is absent in the present case, therefore, no prima facie case against the accused under aforesaid sections the accused are made out.”

The learned Additional Sessions Judge, dismissed the revision petition affirming the order of the trial Court by holding thus:-

“5. After hearing the learned counsel for the parties, scrutinizing oral as well as documentary evidence on record, one thing is crystal clear, the revisionist reposed faith in the respondents and he handed over blank signed cheques and blank signed papers to them. It means he handed over the same to the respondents to use the same by them in the way they desired. Later on, converting the signed documents and signed blank cheques by the respondents does not amount to offence of cheating or forgery, because, nothing is on record that the revisionist ever signed the blank cheques or papers under duress. He signed the same voluntarily. Why he executed blank documents at the instance of the respondents, without going through the contents of the same. It is his own fault and not the fault of the respondents. The learned trial court has, rightly, appreciated the evidence on record in legal and judicious manners. Moreover, his own document Ex.C1 is a copy of plaint of suit filed by the respondent no.1 against him in the court of learned Civil Judge (Senior Division), Panchkula, for recovery of Rs.3 lacs and document Ex.C2 is the copy of complaint filed by the respondent no.1 against the revisionist under section 138 of the Negotiable Instruments Act, 1881 and the documents show he issued cheque Ex.C3 and it was dishonoured. From the material on record, it is crystal

clear the complaint has been filed by the revisionist to wriggle out from civil as well as criminal liability in the litigation, specifically, mentioned by himself in para No.21 of the complaint. In Para No.21 and 26 of the complaint filed by him, he has also admitted filing of criminal complaint against the respondents. During the course of arguments, the learned counsel for the respondents placed on record copy of complaint filed against the respondents, as mentioned in para No.25 of the complaint filed by the revisionist, the respondents have been ordered to be summoned on account of commission of offence punishable under sections 420, 467, 468, 471 of IPC read with section 120-B of IPC, as vide order dated 16.04.2015. The said complaint was instituted on 11.02.2012 whereas the complaint from which this revision has arisen, was instituted on 07.04.2012. From the perusal of the copy of previous complaint it is clear the subsequent complaint filed before the learned trial court, from which this revision has ensued, is based on same set of allegations. No one can be tried or punished for the same offence twice, as envisaged under section 300 of Cr.P.C. Due to this reason the complaint before the learned trial court was also not maintainable.

6. In this way, the learned trial court has not committed any illegality. It has also appreciated the evidence on record in legal and judicious manners and dismissal of the complaint of the revisionist has not caused any sort of injustice to him, rather, he misused the process of court while concealing true facts. The findings recorded by the learned trial court are hereby affirmed.”

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).

From the forgoing discussion, this Court finds thereto no illegality or perversity in the orders passed by the Courts below, warranting any intervention. The present petition thus, is sans merit. Consequently, the same stands dismissed.

(AMAN CHAUDHARY)
JUDGE

February 22, 2023
S.Sharma(syr)

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