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

CRM-M-40944-2023
Date of decision : 22.11.2023

GURMEET SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sant Kashyap, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. Aditya Dassaur, Advocate
for the complainant/respondent No.2.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C.
seeking quashing of FIR No.85 dated 18.05.2023 registered for the offence
punishable under Section 420 IPC at Police Station Divison No.6, Police
Commissionerate Ludhiana, District Ludhiana and all proceedings
subsequent thereto.

2. FIR was registered by one Anmol Preet Singh s/o Pushpinder
Pal Singh alleging as under :

“xxx That the applicant is a peace loving and law abiding citizen
and permanent resident of Ludhiana. He is running his business
of sale of Auto Parts under the name and style of M/s Kind Auto
Parts, Dashmesh Nagar, Near Chawla Ice Cream, Link Road,

Ludhiana as its proprietor. 2. That the accused No.1 along with his father Shri Satnam Singh/accused No.2, son Amrinder Singh alias Kabir/accused No.3 and their associates namely Amrik Singh/accused No.4 and Soni/accused No.5 approached the complainant on 24.3.2022 and represented that accused No. 1/Gurmeet Singh is running his business of sale of auto parts under the name and style of M/s Shari Di Hatti, as its proprietor and the aforesaid accused persons further represented that accused No.1 enjoys great reputation in the market and further that his shop is also situated in Preet Nagar, Link Road, Ludhiana and that accused No.1 wants to purchase auto parts against payment of accused payee cheques and the accused No.1 also gave details of the goods to be purchased by him from the complainant. Believing the representations made by the accused persons to be correct, the complainant agreed to sell the goods to the accused No.1 against payment by cheques and supplied auto parts to the accused No.1 detailed in invoice No.769 dated 24.3.2022 for Rs.10,00,000/-(Rupees ten lacs only) drawn on Bank of Maharashtra, B-XXII-2566 and 2566/1, Near Punjab Handloom Emporium, Dashmesh Nagar, Gill Road, Ludhiana, issued by accused No.1 Gurmeet Singh of M/s Shary Di Hatti out of his account No.60036092993 in favour of the aforesaid proprietorship concern of the complainant with the assurance that the said cheque shall be duly honoured on its presentation to the bank. The said cheque was issued by accused No.1/Gurmeet Singh in discharge of his aforesaid legally enforceable liability to pay the amount of the goods purchased by him against the said invoice from the complainant. 3. That the complainant believed all the representations made by the accused to be correct and bonafide believing the same to be true, the goods were supplied to the accused vide the aforesaid invoice and the complainant through his Bankers namely HDFC Bank Ltd, Gill Road, Ludhiana presented the aforesaid cheque for collection, which was further sent in clearing by the said Bank to the Bank of the accused No. 1 but the said cheque on presentation has

been received back as dishonoured by the concerned bank and vide Bank Memo dated 29.3.2022 with the remarks "Kindly contact Drawee Bank". After dishonouring of the aforesaid cheques, the complainant contacted the accused and requested them to make the payment of outstanding amount towards purchase of goods by accused No. 1 but the accused flatly refused to make the payment to the complainant and threatened that in case the accused are forced to make the payment by using any coercive method or threats, the accused No. 1 shall commit suicide and shall implicate the complainant and his family in false criminal cases. 4. That as a matter of fact, the said accused before issuing the said cheque had already given instructions to his Bank that payment of the said cheque may be stopped, meaning thereby the accused approached the complainant and purchased goods from the complainant and issued the cheque with the false assurance of honouring the same by hatching a pre-planned criminal conspiracy with each other and intention, the accused made the aforesaid false representations before purchasing the said goods from the complainant and pursuant to that conspiracy with each other they committed offence of cheating punishable under Section 420 read with Section 120B IPC. That by the aforesaid acts and conduct of the accused they have committed offences punishable under Section 420 read with Section 120B IPC in criminal conspiracy with each other, its, therefore, prayed that an FIR under Section 420 read with Section 120B IPC may kindly be ordered to be registered against all the accused persons and may be dealt with in accordance with law. Applicant:- Anmol Preet Singh Proprietor M/s King Auto Parts, Dashmesh Nagar, Near Chawla Ice Cream, Link Road, Ludhiana (Mob No.8550800001). Sd/- (in English) Anmol Preet Singh.”

3. Counsel for the petitioner would contend that the parties are

already before the Court after the complainant preferred a complaint under Section 138 of the Negotiable Instruments Act, 1881 as the cheque issued by the petitioner got dishonoured and thus the present FIR registered for the offences punishable under Section 420 read with Section 120-B IPC cannot survive in view of bar as contained in Section 300(1) of the Code. Reliance is being placed upon law laid by the Apex Court in the case of **Kola Veera Ragha Rao vs. Gorantla Venkateswara Rao and another, (2011) 2 SCC 703; G. Sagar Suri vs. State of U.P.; (2000) 2 SCC 636** and **J. Vedhasingh vs. R.M. Govindan and others, 2022(4) R.C.R.(Criminal) 532.**

4. He further submits that the issue precisely raised by him already stands referred to the Larger Bench by Two Judges Bench in **J. Vedhasingh vs. R.M. Govindan and others** (supra).

5. Having heard counsel for the parties and after going through records of the case, in the considered opinion of this Court invocation of Section 300(1) Cr.P.C. in the present circumstances would be misreading the provision itself. Provision contained under Section 300 has its genesis in the principle of double jeopardy as recognized under Article 20 (2) of the Constitution of India. The primary requirement as is evident from the bare perusal of Section 300 Cr.P.C. is that a person invoking the principle of double jeopardy should have been once convicted or acquitted of such offence which is missing in the present case.

6. Apart therefrom, it is settled proposition of law that the

complainant in the peculiar facts and circumstances of the case can maintain separate proceedings *qua* offence punishable under Section 420 IPC irrespective of the proceedings initiated under Section 138 of the N.I. Act. The two can exist together as held by the Apex Court in the case of **Sangeetaben Mahendrabhai Patel vs. State of Gujarat and another, (2012) 7 SCC 621** observing as under :

“24. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of *autrefois acquit* or Section 300 Cr.P.C. or Section 71 IPC or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of *autrefois acquit* is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.

25. In ***Radheshyam Kejriwal v. State of West Bengal & Anr., (2011) 3 SCC 581***, while dealing with the proceedings under the provisions of Foreign Exchange Regulation Act, 1973, this Court quashed the proceedings (by a majority of 2:1) under Section 56 of the said Act because adjudication under Section 51 stood finalised. The Court held :

“The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

The ratio of the aforesaid judgment is not applicable in this case for the reason that proceedings under Section 138 of N.I. Act are still sub judice as the appeal is pending and the matter has not attained finality.

26. Learned counsel for the appellant has further placed reliance on the judgment in ***G. Sagar Suri & Anr. v. State of U.P. & Ors., (2000) 2 SCC 636***, wherein during the pendency of the proceedings under Section 138 N.I. Act, prosecution under Sections 406/420 IPC had been launched. This Court quashed the criminal proceedings under Sections 406/420 IPC, observing that it would amount to abuse of process of law. In fact, the issue as to whether the ingredients of both the offences were same, had neither been raised nor decided. Therefore, the ratio of that judgment does not have application on the facts of this case. Same remained the position so far as the judgment in ***Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao & Anr., (2011) 2 SCC 703***, is concerned. It has been held therein that once the conviction under Section 138 of N.I. Act has been recorded, the question of trying a

same person under Section 420 IPC or any other provision of IPC or any other statute is not permissible being hit by Article 20(2) of the Constitution and Section 300(1) Cr.P.C.

27. Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 N.I. Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 N.I. Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed. In the case under N.I. Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under N.I. Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under N.I. Act can only be initiated by filing a complaint. However, in a case under the IPC such a condition is not necessary.

28. There may be some overlapping of facts in both the cases but ingredients of offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions.

7. In view of above, the petition stands dismissed.

November 22, 2023
Dpr

(Pankaj Jain)
Judge

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