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

CRM-M-41529-2023 (O&M)
Date of Decision: 14.11.2024

Alamjit Singh Mann ..... Petitioner

Versus

Varinderjit Singh ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate,
Mr. Varun Chauhan, Advocate and
Ms. Malvi Singla, Advocate, for the petitioner.

Mr.Vijay Kumar Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate,
Mr. Pankaj Gautam, Advocate and
Mr. Vijayveer Singh, Advocate, for the respondent.

Rajesh Bhardwaj, J. (ORAL)

CRM-42453-2024

Present application has been filed under Section 340 Cr.P.C. read with Section 195 Cr.P.C. praying for initiation of proceedings against petitioner- Alamjit Singh Mann, for committing the offence of prejury.

Learned Senior counsel for the respondent-applicant has submitted that the petitioner took Rs.50 lacs from the respondent-applicant as a friendly loan for the treatment of his wife in April 2015 and issued two cheques amounting to Rs.30 lacs and 20 lacs, which on presentation were returned with remarks "Account is closed". He has further submitted that respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner in which the petitioner moved an application for dismissal of the complaint on the ground that he was neither the proprietor of Shinda Electricals nor had issued any cheque. The said application was declined on 25.07.2023. By taking such a plea by pleading himself as a stranger to the transaction, the petitioner has tried to dupe the respondent to the tune of Rs.50 lacs and also misrepresented himself while handing over the cheques to the respondent-complainant. He has further submitted that the petitioner had relied upon the vouchers issued by one Dalip Singh Randhawa and also averred on the affidavit, which reads as under:

> "That Dalip Singh Randhawa also issued cheque No.818148 dated 30122017 for the amount Rs.12,50,000/- against the Cheque Number 985948 and the Respondent/Complainant gave an undertaking on a voucher with respect to the same on 24022016 In terms of the undertaking it was also mentioned that an amount of Rs 7,50,000 was paid by the Respondent to Mr. DS Randhawa. The Respondent also gave an undertaking on a separate voucher dated24.01.2016 with respect to the payment of Rs7,50,000/- In terms of the undertakings on the vouchers it was specifically Complainant/Respondent mentioned does that not if return the Cheque No985927 and Cheque Number 985948 to Dalip Singh Randhawa legal action could be taken against him. This clearly evidences that the transactions were in fact between Dalip Singh Randhawa and Complainant/Respondent. A copy of the vouchers is appended as Annexure P-7."

He has further submitted that the petitioner is a habitual offender of cheating and defrauding the innocent people and many other FIRs have already been registered against him. He has submitted that thereafter, the petitioner approached this Court by way of filing the present petition and placed on record forged and fabricated documents and has made himself liable for the enquiry under Section 340 Cr.P.C. read with 195

Cr.P.C. to be conducted.

Although the petitioner has not filed any specific reply to the present application, but learned Senior Counsel for the petitioner has vehemently opposed the submissions made by learned Senior counsel for the respondent-applicant and has stated that the present application is not maintainable before this Court and has been filed by the respondent just to prolong the proceedings of the present case. He has further submitted that the application filed is totally vexatious and not even maintainable in view of the law settled. He thus has prayed for dismissed of the present application.

Heard.

A perusal of the file shows that the respondent filed reply to the main petition on 19.01.2024, wherein, he denied the case of the petitioner, but has not uttered even a single word regarding forging and fabricating the documents filed by the petitioner. The case remained pending for arguments since 29.02.2024 and when on 04.10.2024, the arguments were heard in part and the case was adjourned to 22.10.2024 for remaining arguments, the respondent has come up with the present application by filing the same on 20.10.2024, just two days before the date fixed for final arguments in the main case. Thus this shows that the respondent is making every effort to delay the proceedings of the case. The present case relates to a complaint filed in the year 2016 and filing of the present application at the belated stage when the arguments in part were heard by this Court, if further indication of the fact that the respondent is intentionally delaying the proceedings.

Hon'ble Supreme Court in case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another, AIR 2005 SC 2119** has held that in view of the language used in Section 340 Cr.P.C., the Court is not bound to make a complaint regarding the commission of an offence referred to in Section 195(1)(b) Cr.P.C. as the Section is conditioned by the words 'court is of opinion that it is expedient in the interest of justice'. This shows that such a course will be adopted only if the interest of justice requires and not in every case.

Under these circumstances, this Court does not find any substance in the application filed by the respondent-applicant and the same is hereby dismissed.

Main case

1. Prayer in the present petition is for quashing of complaint bearing No.COMA-9-2016 dated 21.01.2016 (Annexure P-6) titled as Varinderjit Singh vs. M/s Shinda Electricals, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') filed against the petitioner; the summoning order dated 21.01.2016 (Annexure P-8) passed by learned Sub Divisional Judicial Magistrate, Payal, Ludhiana and the order dated 25.07.2023 (Annexure P-11) vide which the application filed by the petitioner for dismissal of the complaint and for discharging the petitioner, was dismissed.

2. As per facts of the case, the petitioner was prosecuted by the respondent, namely, Varinderjit Singh on the basis of the complaint filed under Section 138 of the Act. On the basis of the primary evidence, learned trial Court summoned the petitioner vide summoning order dated

21.01.2016. The petitioner filed an application praying for dropping the proceedings against him by setting aside the summoning order, which was dismissed vide order dated 25.07.2023. Aggrieved by the same, the petitioner has approached this Court for quashing the complaint dated 21.01.2016, the impugned summoning order dated 21.01.2016 and order dated 25.07.2023 by way of filing the present petition.

3. Learned Senior Counsel for the petitioner has vehemently contended that prosecution of the petitioner in the impugned complaint is totally an abuse of the process of the Court. He has submitted that the summoning order dated 21.01.2016 and order dated 25.07.2023 are unsustainable in the eyes of law. It is submitted that the impugned complaint has been filed by the respondent on the allegation that he issued two cheques bearing cheque No.985927 dated 25.11.2015 for an amount of Rs.30 lacs and cheque No.985948 dated 25.11.2025 for an amount of Rs.20 lacs, which were dishonoured on the presentation by the respondent before the concerned Bank with the remark “Account is Closed”. He has submitted that neither the petitioner was proprietor of the firm, namely, M/s Shinda Electricals, nor he had signed the impugned cheques. He has submitted that one Dalip Singh Randhawa is actual proprietor of M/s Shinda Electricals and it is he, who had issued these cheques and signed as well. It has been submitted that it came to the knowledge of the petitioner that respondent gave an undertaking on a voucher dated 16.11.2015, from which it appears that there were certain monetary transactions between Dalip Singh Randhawa and the respondent and same has nothing to do with the petitioner. He has submitted that the respondent-complainant is accused in

FIR No.11 dated 29.01.2023, registered under Sections 379, 411, 120-B and 34 IPC, at Police Station Dehlon, Police Commissionerate, Ludhiana. He has further submitted that Dalip Singh Randhawa also issued cheque No.818148 dated 30.12.2017 for an amount of Rs.12,50,000/- against cheque No.985948 and the respondent-complainant gave an undertaking on a voucher with respect to the same on 24.02.2016 and in terms of the undertaking, it was mentioned that an amount of Rs.7,50,000/- was paid by respondent to Dalip Singh Randhawa. He has submitted that the respondent gave an undertaking on the voucher, wherein, it was specifically mentioned that if the respondent-complainant does not return the cheques No.985927 and 985948 to Dalip Singh Randhawa, legal action would be taken against him. It is submitted that learned Sub Divisional Judicial Magistrate, Payal vide order dated 21.01.2016 had passed the summoning order in a mechanical and cavalier manner. He has submitted that learned Magistrate had failed to apply its judicious mind in summoning the petitioner. He has submitted that no pre-summoning evidence led by the respondent to show that the petitioner was proprietor of M/s Shinda Electricals. It is submitted that vide order dated 16.09.2022, learned Sub Divisional Judicial Magistrate, Payal issued non-bailable warrants of arrest against the petitioner. He submits that thereafter, the petitioner filed an application dated 16.09.2022 and learned Court vide order dated 30.09.2022 admitted the petitioner on bail and accepted his bail/surety bonds for a sum of Rs.20,000/-. It is submitted that the petitioner filed an application dated 29.11.2022 for dismissal of the complaint and to discharge the petitioner. He has submitted that the respondent was one of the tenants of the petitioner in M/s RKM Business Centre, SCO 485-486, Sector 35-C, Chandigarh. It is further submitted that the respondent-complainant failed to make payment of the material purchased after the closing of the restaurant and selling the cars. It has been further submitted by learned Senior counsel for the petitioner that the respondent also failed to make the payment of Rs.35 lacs approximately to the petitioner. He vehemently contends that in order to wriggle out of the payment to the petitioner, respondent clandestinely filed the impugned complaint against the petitioner for which the petitioner is not liable to the prosecuted. He has submitted that once the petitioner has neither issued the impugned cheques nor signed the same, no case is made out against him as per the statutory provisions of Sections 138 and 141 of the Act, for his prosecution. He submits that the impugned complaint has been instituted by the respondent-complainant to absolve himself from his liability and to harass the petitioner. He has submitted that the prosecution of the petitioner in the impugned complaint and the summoning order, is totally against the law settled. He has further contended that the application filed by the petitioner for his discharge has also been illegally dismissed by the trial Court. He has relied upon the judgment of Hon'ble Supreme Court in Anil Kumar vs. M.K. Aiyappa, (2013) 10 SCC 705 and thus submitted that the impugned complaint deserves to be quashed.

4. Learned Senior Counsel for the respondent has opposed the submissions made by learned Senior counsel for the petitioner. It has been submitted that the petitioner in conspiracy with Dalip Singh Randhawa had issued the impugned cheuqes. He has submitted that the petitioner has close nexus with Dalip Singh Randhawa and it is on his asking the impugned

cheques were issued to respondent-complainant. He thus submits that the petitioner cannot be absolved from his prosecution as the impugned cheques were issued in conspiracy with the petitioner. He has submitted that the petitioner has raised the disputed questions of facts, which can be resolved only by the Civil Court. He has submitted that the petitioner filed the present petition under Section 482 Cr.P.C. and thus, the same is not maintainable. He further submits that thus, the present petition deserves to be dismissed.

5. The Court has heard learned counsel for the parties and perused the record. Precise issue involved in the present petition is that whether the petitioner is liable to be prosecuted in the impugned complaint filed by the respondent or not. After hearing both the sides, this is an admitted position that the complaint filed by the respondent before the trial Court on the allegation that the impugned cheques were dishonoured, are neither issued by the petitioner nor signed by him. Learned Senior Counsel for the respondent-complainant has asserted that the petitioner has close nexus with Dalip Singh Randhawa, who had issued the cheques and thus, both have hatched conspiracy in deceiving the respondent-complainant.

6. To understand the controversy in hand, statutory provisions of Sections 138 and 141 of the Act are necessary to be considered, which are reproduced as under:-

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account.—** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability,

is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

141. Offences by companies. — (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter. (2)Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation.—For the purposes of this section,—

(a)"company" means any body corporate and includes a firm or other association of individuals; and

(b)"director", in relation to a firm, means a partner in the firm."

7. It is thus apparent that for the prosecution of a person under Section 138 of the Act, essential ingredients are necessary to be fulfilled. However, once the petitioner has admittedly neither issued the cheques nor signed the same, requisite ingredients under Sections 138 of the Act, are not even primarily fulfilled.

8. A bare perusal of statutory provisions of the 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 would show that the High Court may make

such orders, as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Hon'ble Supreme Court in **Gian Singh** vs **State of Punjab and another** (2012) 10 Supreme Court Cases 303 further dealt with the issue and the earlier law settled by the Supreme Court for quashing of the FIR in **State of Haryana** vs **Bhajan Lal**, 1992 Supp (1) SCC 335. Para 61 of the judgment reads as under:-

> "61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc; cannot provide for any basis for quashing

criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

9. Hon'ble Supreme Court in **Mrs. Aparna A. Shah vs. M/s Sheth Developers Pvt. Ltd. and another, 2013 AIR (SC) (Cri) 1724**, has already dealt with the issue involved in the present case and held that only drawer of the cheque can be prosecuted in any proceeding under Section 138 of the Act. Relevant para No.23 is reproduced as under:-

"23) We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

10. This Court is convinced that weighing the facts and circumstances of the case on the anvil of law settled, there being no *prima facie* case having been made out against the petitioner, his prosecution in the impugned complaint is nothing, but an abuse of the process of the Court. Thus, in the facts and circumstances, complaint bearing No.COMA-9-2016

dated 21.01.2016 (Annexure P-6) titled as Varinderjit Singh vs. M/s Shinda Electricals,; impugned summoning order dated 21.01.2016 and order dated 25.07.2023, are hereby quashed qua the petitioner.

11. Petition stands allowed.

(RAJESH BHARDWAJ)
JUDGE

14.11.2024
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No