

2024:PHHC:117428



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CRM M-43139 of 2024
Date of Decision: 03.09.2024

Ajmer Gir @ Ajmer Singh ...Petitioner
Vikas @ Manu ... Respondent

Versus

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Omkar Chauhan, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the order dated 06.02.2024 (Annexure P-4) passed by the Court of Sub Divisional Judicial Magistrate, Moonak, whereby, the criminal complaint filed by the present petitioner was treated as “a criminal case instituted on a private complaint in a warrant case”.
2. Learned counsel for the petitioner contends that in the present case, the petitioner had instituted a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the respondent/accused, on account of dishonour of a cheque. After the preliminary evidence was led, the respondent was ordered to be summoned under Section 138 of the Act as well as

Section 420 IPC vide summoning order dated 04.07.2018 (Annexure P-2). After appearance of the respondent, the trial progressed and the trial Court had adopted the procedure of a summary trial. During the course of hearing on 06.02.2024 (Annexure P-4), the trial Court held that the respondent was summoned for facing trial under Section 420 IPC and the case was treated as a criminal case instituted on a private complaint in a warrant case.

3. Learned counsel for the petitioner contends that the trial in the present case was pending for the last more than 06 years and the proceedings had almost concluded. He further contends that since the complaint was filed under Section 138 of the Act, the case was to be tried by adopting a procedure provided for summary trial, which was actually followed by the trial Court. However, all of a sudden, the impugned order was passed, which is illegal and unsustainable.

4. I have heard learned counsel for the petitioner and perused the record carefully.

5. Section 2(x) of the Code of Criminal Procedure defines the warrant cases, which is reproduced below:-

Section 2(x):- “warrant case” means a case relating to an offence punishable with death; imprisonment for life or imprisonment for a term exceeding two years”.

6. In the present case, vide the summoning order dated 04.07.2018 (Annexure P-2), the respondent was ordered to be

summoned for committing an offence punishable under Section 138 of the Act as well as Section 420 IPC. Section 420 IPC is punishable with imprisonment of either description for a term which may extend to 07 years and shall also be liable to fine. Thus, keeping in view the punishment provided by the statute under Section 420 IPC, the trial Court was obliged to follow the procedure, which was provided for a criminal trial, initiated on a complaint in a warrant case. Even in the present case, the trial Court had wrongly adopted the procedure prescribed for summary trials and when this fact was brought to the notice of the Court, the Court corrected the procedural mistake and correctly ordered that the proceedings initiated in the present case after the issuance of notice of accusation stood vitiated and the case was correctly posted for pre-charge evidence of the complainant. Thus, finding no illegality in the impugned order, the order dated 06.02.2024 (Annexure P-4) passed by the Court of Sub Divisional Judicial Magistrate, Moonak, is ordered to be upheld.

7. Since the trial is pending for the last more than 06 years, trial Court is directed to conclude the trial within a period of 01 year from the next date of hearing fixed before the Court.

8. Disposed off accordingly.

03.09.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

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