

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 17.12.2024

CRM-M-59852-2024 (O&M)

BALJINDER SINGH

....PETITIONER

Versus

NARINDER PAL

...RESPONDENT

CRM-M-59855-2024 (O&M)

PARAMJEET KAUR

....PETITIONER

Versus

NARINDER PAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Puri, Advocate and
Mr. Harish Thakur, Advocate for the petitioner.

SANDEEP MOUDGIL, J.

1. This order shall dispose off two above mentioned petitions by this common order as a common question of law and facts are involved in both the petitions, however, the facts are being taken from CRM-M-59852-2024 for the purpose of passing this common order.

2. **Relief sought:**

This is a petition filed under Section 528 of the Bhartiya Nagrik

Suraksha Sanhita, 2023, with a prayer to quash the order dated 13.08.2024, Annexure P-5, passed by the learned Additional Sessions Judge, Pathankot, in CRR No.18/2024 titled “Baljinder Singh Vs. Narinder Pal” dismissing the revision petition and affirming the order of the Judicial Magistrate Ist Class, Pathankot, at Annexure P-4, thereby summoning the petitioner to face trial of the Complaint being No. NI Act 569/2023 dated 08.06.2023 titled “Narinder Pal Vs. Baljinder Singh” and also the complaint filed under Section 138 of the Negotiable Instruments Act, with all consequential proceedings arising therefrom, including the summoning order, Annexure P-4.

3. Allegations in complaint:

It is alleged that the complainant is running business of Trading & Transportation of sand and boulder etc. at Pathankot and Himachal Pradesh and accused is doing service in Army as a soldier and was having friendly family relations with the complainant. The accused Baljinder Singh alongwith his wife Ms.Paramjeet Kaur had taken money from various persons for arranging job for them, in the departments under Union of India and when accused could not secure job for them, the people pressurized accused and his wife for return of their money. Accordingly, accused and his wife borrowed Rs.80 lacs in cash from the complainant on different occasions. It is a fact that accused returned part of money to complainant on different occasions through Bank Transfers, however, an amount of Rs.35.00 lacs remained pending against the accused and his wife and later accused started avoiding payment to the complainant. It is further alleged that after die hard pressure and pursuance of complainant, the accused agreed to return the payment of complainant and on 21.04.2023, accused and his wife, in order to clear their legally enforceable liability, issued post dated Account Payee cheques bearing

cheque No.924716 dated 28.04.2023 amounting to Rs.25,00,000/- drawn on State Bank of India, Ambala Cantt (online Banking Branch Pathankot) and his wife Paramjeet Kaur issued cheque bearing No.000294 dated 28.04.2023 amounting to Rs.10,00,000/- drawn on ICICI Bank, Pathankot, however, the cheques on presentation were dishonoured with the remarks "Drawers Signature Differ" vide memo dated 29.04.2023. Legal notice dated 06.05.2023 served upon the accused and his wife could not bring out any fruitful results. Hence the complaint.

4. **Contentions:**

On behalf of the petitioner/accused:

It is contended by the learned counsel that the complainant has not given the true facts in his complaint and has concealed the same. The petitioner is innocent and has not committed any offence as alleged. The true facts are that in the year 2019, the father of the petitioner named Sh.Kuldeep Singh was approached by Sh.Brij Lal Dogra s/o Lajju Ram, resident of House No.218, Sundar Nagar, Pathankot, and told that he is having good relations with Army official and with the officials at Punjab and Haryana High Court and if anyone from his family and relatives wants to get employed as Clerk in Punjab and Haryana High Court and in Territorial Army, he can make the arrangement for the same. Sh.Brij Mohan Dogra had a meeting with (a) Baljinder Singh s/o Sh.Kuldeep Singh (b) Rahul Kumar s/o Sh.Pawan Kumar resident of Chak Dhariwal Sarna (c) Govind Sen s/o Sh.Tarsem Kumar resident of village Naglor, Tehsil Nurpur, Kangra, (d)Gokul Sen s/o Sh.Kartar Singh (e) Surinder Singh s/o Sh.Shamsher Singh resident of village Majra, Tehsil Nurpur, District Kangra (g) Balwinder Singh s/o Sh.Hardeep Singh resident of village Fatehpur and informed that he will get them employed as

clerk and for that purpose he demanded Rs.7,00,000/- from each of them. Accordingly, the above persons gave an amount of Rs.28.00 lacs and the qualification certificates to the said Brij Mohan Dogra at his house before his wife. Mr.Dogra assured all of them that he will get them employed very soon but after passing of many months, no one could get employment and Mr.Dogra started making false excuses and matter was lingering on again and again and he did not get anyone of them employed. Thereafter, the above persons demanded their money back whereupon Mr.Dogra started threatening the above persons to teach them a lesson and also said that he will neither return their money nor return their certificates. Even the phone calls were not picked up by Mr.Dogra and as such the above persons moved complaint to SSP, Pathankot and during the course of investigation of the said complaint, the petitioner agreed to return the money taken by his father from the above persons, with interest, however, he showed his inability to pay this much huge amount, therefore, he took a loan of Rs.35,00,000/- on interest @ 2% per annum from the respondent. However, at the time of advancement of loan in the year 2019, the respondent had obtained blank signed cheques of Baljinder Singh (the petitioner), his wife Paramjeet Kaur and his cousin brother Surinder Singh. The loan amount of Rs.35.00 lacs was received and the petitioner started making regular payments to the respondent and a total amount of Rs.60.00 lacs was paid by the petitioner through bank transfers and in cash also, to the respondent as against Rs.35.00 lacs, after selling entire jewellery, raising personal loan, taking money from his father in order to return the entire loan amount. Even after received entire loan amount alongwith interest amounting to Rs.60.00 lacs, the respondent did not return the cheques to the petitioner on demand and threatened the petitioner with dire consequences and even attacked the petitioner. FIR No.63/2023 under

Section 451, 504, 506 IPC stands registered against respondent on the complaint of the present petitioner at Police Station Damtal (Himachal Pradesh). As such, now in 2023, the respondents has misused the cheques received by him from the petitioner and his wife – Paramjeet Kaur and also the cousin brother as security while advancing the loan of Rs.35.00 lacs in the year 2019, which were not returned by him even after receiving Rs.60.00 lacs from the petitioner. The order passed by the learned trial Court (Judicial Magistrate Ist Class, Pathankot) in these circumstances is bad in law and accordingly, the order dismissing the revision petition challenging the summoning order is also prima facie bad in law and accordingly, both the orders cannot be allowed to sustain in the eyes of law and are, thus, liable to be quashed.

5. Heard and case file also perused.

6. Before proceeding to dictate this order, it is worth-while to note down that the connected petition has been filed by the wife of present petitioner, named Ms.Paramjeet Kaur. The allegations against are similar and according to the complainant, she had also issued one cheque bearing No.000294 dated 28.04.2023 amounting to Rs.10,00,000/- drawn on ICICI Bank, Pathankot, however, the same on presentation was dishonoured with the remarks “Drawers Signature Differ” vide memo dated 29.04.2023. Hence, the complaint. She has also been summoned by the learned JMJC to face trial of the complaint and her revision petition has also been dismissed by the learned ASJ, Pathankot. Accordingly, this order shall have the same effect on the fate of the said petition.

7. **Analysis:**

Perusal of the case file shows that the accused/petitioner is a

resident of Himachal Pradesh and according to the complainant, the accused/petitioner and his wife borrowed money amounting to Rs.80.00 lacs in cash from complainant on different occasions in order to return the money to the persons from whom they had taken money to provide jobs. It is further alleged by the complainant that after paying part of money, remaining legally enforceable liability payable remained to the tune of Rs.35.00 lacs and in order to discharge the same, the accused/petitioner issued cheque No.924716 dated 28.04.2023 amounting to Rs.25,00,000/- and his wife – Paramjeet Kaur issued cheque No.000294 dated 28.04.2023 amounting to Rs.10,00,000/- which were dishonoured on presentation for realization vide memo dated 29.04.2023 with the remarks “Drawers Signature Differ”. Even after serving the legal notice, cheque amount was not paid.

It is seen from the file that the petitioner has attached a copy of the reply given by the petitioner and his wife to the legal notice served by the complainant, which is at Annexure P-2 on page 14 of the paper book, wherein the same facts were narrated by the petitioner and his wife as have been argued by the learned counsel for the petitioner and his wife and noted down hereinabove in the contention on behalf of the petitioner that the loan of Rs.35.00 lacs with interest was raised in the year 2019 and in lieu of its repayment, cheques were obtained by the complainant which were not returned to the complainant and his wife by the complainant even after receiving the agreed amount of Rs.60.00 lacs. Other paras of the legal notice were denied in verbatim on behalf of the petitioner and his wife. However, the complainant in his complaint has concealed the factum of receiving reply to his legal notice from the petitioner and his wife – Paramjeet Kaur. As such, there is clear cut concealment on the part of the complainant and this appears to have been done with an intention to secure summoning order for sure.

Therefore, the summoning order dated 08.06.2023, Annexure P-4, is liable to be quashed as the complainant has concealed in his complaint the material facts from the Court. However, the petitioner has also not placed a copy of the reply to the legal notice on record before the learned Revisional Court nor his counsel argued on the reply to the legal notice, however, has chosen to place the same on record vide Annexure P-2. This shows the negligence on the part of the petitioner also. However, this Court finds it to be a fit case to interfere because counter reply of the complainant to the reply to the legal notice goes to show that the story put-forth by the petitioner in the reply was accepted by the complainant as true, as such, the petitioner has made out a case in his favour for acceptance of his prayer.

8. **Conclusion:**

This Court in view of the above does not deem it appropriate to without issuing notice to the respondent because of his concealment of true facts in the complaint, Annexure P-3, and accordingly, hereby quash the complaint, Annexure P-3, and also the summoning order, Annexure P-4 and the order of the Revisional Court, Annexure P-5, with all subsequent proceedings arising therefrom, in the present petition and also in the connected petition (CRM-M-59855-2024).

As the complainant/respondent has intentionally and deliberately concealed the material and true facts from the Court, cost of Rs.10,000/- is imposed on him in each of the petitions for misleading the Court, which shall be deposited with the Punjab & Haryana High Court Bar Association, within one month from the receipt of certified copy of this order.

At the same time, since the petitioner has deliberately also did not place a copy of the reply dated 11.05.2023 (Annexure P-2), to the legal

notice, on record before the learned Revisional Court, which was material document for the proper adjudication of the matter. Thus, the petitioner is also burdened with the cost of Rs.10,000/- in each of the petitions, which shall be deposited with the Punjab & Haryana High Court Bar Clerks' Association, within one month from the receipt of certified copy of this order.

The present petitions are allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

17.12.2024
Poonam Negi

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