

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

Gwalior, Dated : 20/12/17

Shri S.K.Shrivastva, learned counsel for the petitioner.

Respondent No.1 is not noticed.

Shri Vivek Jain, learned Public Prosecutor, for respondent No.2/State.

There is no need of giving notice of hearing of this petition under Section 482 of the Cr.P.C to respondent no.1 Purushottam Chugh as only a legal issue is involved in the present case.

Learned counsel for the parties present are heard finally on the petition at motion stage and the following order is passed:-

ORDER

(1). The petitioner has filed the petition under Section 482 of the Cr.P.C challenging the validity and correctness of the impugned order dated 17.7.2017 passed by the Additional Chief Judicial Magistrate (Shree R.L.Shakya) Gwalior in Criminal Complaint Case No 8850 of 2014, whereby the said case had been committed for trial to the Court of Sessions Judge Gwalior.

(2). The brief facts for adjudication of the petition are given below :

(2.1) Upon the complaint of petitioner, Criminal Complaint Case No.8850 of 2014 cause title Nitin Singhal Vs. Purushottam Chugh is registered

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

against the respondent no.1 Purushottam Chugh under Section 138 of the Negotiable Instruments Act (for short "the Act") and the case was pending on the file of learned ACJM Gwalior.

(2.2). Upon the complaint of respondent no.1, Criminal Complaint Case No.310 of 2017 cause title Purushottam Chugh Vs. Nitin Singhal and another was registered against the petitioner and Vipin Garg under Sections 420, 467, 468, 471 and 120B of the I.P.C and the case was pending on the file of learned ACJM Gwalior.

(2.3). In Criminal Complaint Case No.8850 of 2014, respondent No.1 made an application dated 9.9.2017 praying that Criminal Complaint Case No. 310 of 2017 is triable by a Court of Session and the present case (Criminal Complaint Case No.8850 of 2014) and Criminal Complaint Case No.310 of 2017 are cross cases. Therefore, Criminal Complaint Case No.8850 of 2014 be also committed to the Court of Sessions Judge Gwalior.

(2.4). Vide the impugned order dated 17.7.2017, the learned ACJM allowed the application and committed Criminal Complaint Case No.8850 of 2014 to the Court of Sessions Judge Gwalior. Hence, this petition.

(3) Learned counsel for the petitioner contends that there is no provision in the Cr.P.C whereby,

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

Criminal Complaint Case No.8850 of 2014 could be committed to the Court of Sessions Judge Gwalior because in that case the trial will be held as summons case as per the procedure set out in Chapter XX Cr.P.C in view of the punishment provided for under Section 138 of the Act. He also contends that the learned ACJM has wrongly held that both the cases are cross cases. Upon these contentions, he submits that the learned ACJM had committed a legal error in committing Criminal Complaint Case No.8850 of 2014 to the Court of Sessions Judge Gwalior. Therefore, the impugned order be set-aside by allowing this petition.

(4). Learned Public Prosecutor has left the matter for decision to the discretion of this Court on the ground that both the cases are registered upon the complaints of the parties concerned.

(5). I have given careful consideration to the arguments raised by the learned counsel for the petitioner and perused the impugned order and the material on record.

(6). At this stage, it would be appropriate to mention, in brief, the case of the petitioner and that of respondent no.1 : -

(6.1). The petitioner filed the complaint against respondent no.1 under Section 138 of the Act alleging that he gave the latter a loan of Rs.1,75,000/- (one lac seventy five thousand) in cash to meet his

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

family obligations. For repayment of the loan, he gave him a cheque of the said amount bearing No.438538 dated 10.12.2013 (for short "the cheque") being drawn on the Oriental Bank of Commerce Branch Huzrat Chowk Gwalior (for short "the drawee bank"), where he (respondent No.1) has the bank account. He presented the cheque for collection of the amount in the Punjab National Bank Branch Naya Bazar, Lashker Gwalior (for short "the payee bank"), where he (complainant) has his bank account. On 28.1.2014, the payee bank had informed him that the drawee bank had dishonoured the cheque with the remarks "funds insufficient" and "payment stopped" by the drawer (respondent No.1). Thereafter, he gave respondent No.1 the demand notice in terms of Section 138 of the Act but respondent no.1 had not given him the amount in the statutory time period. Hence, he filed the complaint for his prosecution. The complaint is registered under the aforesaid Section of law as Criminal Complaint Case No.8850 of 2014.

(6.2). Respondent no.1 filed the complaint for the prosecution of the petitioner and Vipin Garg under Sections 420, 467, 468, 471, 506 Part II and 120-B of the I.P.C stating that his deceased son Dipesh took loans from some persons. He repaid most of the loans to the creditors in his life time, and he himself made repayments of few remaining loans to the lenders.

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

Later, his son committed suicide. On 5.4.2013, said Vipin Garg came to his residence with some persons and forced him to sign blank cheques bearing Cheque Nos. 438536 to 438550. The total cheques are 15 in numbers. The cheque book of the said cheques had been issued to him by his drawee bank. Said Vipin Garg gave one of his signed blank cheques to Nitin Singhal, the petitioner herein. He filled up the amount in the cheque and filed the complaint against him under Section 138 of the Act. The complaint is registered in the aforesaid Sections of law against the petitioner and Vipin Garg as Criminal Complaint Case No.310 of 2017.

(7). Vide the impugned order, the learned ACJM had held that both the cases are cross cases on the ground that the cheque in dispute is one and the same in both the cases. Thereupon, he committed Criminal Complaint Case No.8850 of 2014 to the Court of Sessions Judge Gwalior so that it could be tried by one and the same Court of Session because the offences of Criminal Complaint Case No. 310/2017 are triable by a Court of Session as per M.P. Amendment Act 2 of 2008.

(8). Upon the perusal of the contents of the complaints of both the cases, it is a firmed opinion of this court that learned ACJM has rightly held that both the cases are cross cases to each other. It is well settled in law that a case and a counter case ought to

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

be tried by one and the same Court of Session having competent jurisdiction irrespective of the fact that one case is exclusively triable by the court of JMFC and the other is exclusively triable by a Court of Session. In this connection, a reference can be made to a decision rendered by the Supreme Court in the case of Sudhir and Others Vs. State of M.P., AIR 2001 SC 626. It would not be out of place to observe that there is a growing tendency among the accused persons of the cases under 138 of the Act in order to create some sort of defence they file complaints against the complainants of such cases under Section 200 of the Cr.P.C before the courts for their prosecution for the offences punishable under the I.P.C making false accusations such as the complainants have forcibly obtained the signed blank cheques giving threats; that the complainants have stolen signed blank cheques and that the complainants have obtained signed blank cheques by playing frauds so on and so forth instead of contesting the cases under 138 of the Act on reasonable and lawful grounds of defence. The Magistrates are in general registered such cases without holding the due enquiry as provided for in Chapter XV of the Cr.P.C. In the opinion of this court, such types of cases should be tried by one and the same court having jurisdiction to try both the cases treating them counter cases. Both the criminal complaint cases is one of the examples. In that view of

MCRC.26941/2017.
(Nitin Singhal Vs. Purushottam Chugh & Another)

this court and the ratio of the said case law, it is held that the learned ACJM has not made any legal error in committing Criminal Complaint Case No.8850 of 2014 to the Court of Sessions Judge Gwalior vide the impugned order.

(9). In view of the foregoing reasoning and discussion, it is held that this petition is devoid of merits and substance and is hereby dismissed with upholding the impugned order.

(10). Accordingly, this petition is disposed of.
C.C as per rules.

(Rajendra Mahajan)
Judge

(Rks)