

(17) During the course of arguments, the complainant party i.e. Harbhajan Kaur PW-10, her husband Bhagwan Singh, Gurvinder Singh PW-11, Pragat Singh and Joginder Singh appeared before us in Court and stated that they had compromised the matter with appellant Surjit Singh and prayed that the Court may take a lenient view in the interest of both the parties.

(18) After going through the evidence and from the arguments of learned counsel for the parties, it comes out that appellant Surjit Singh was annoyed with the victim as his father was giving more land to the complainant party. He went to the house of the deceased to complain, but some sort of altercation took place. At the heat of the moment appellant Surjit Singh hit the deceased with a *Kirpan* Ex. PN/2 which fatally injured deceased Lal Singh. At the most, appellant could be held liable under Section 304 Part-I I.P.C.

(19) Conviction of the appellant is modified from Section 302 to Section 304 Part-I I.P.C. and he is sentenced to undergo RI for 6 years.

(20) With the above modification in conviction and sentence, appeal is dismissed.

R.N.R.

Before Mehtab S. Gill & A.N. Jindal, JJ.

HARINDERPAL SINGH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

Criminal Misc No. 48695/M of 2004

24th August, 2007

Code of Criminal Procedure, 1973—S. 482—Negotiable of Instruments Act, 1881—S. 138—Dishonour of cheques—Proceedings u/s 138 of N.I. Act pending—Whether FIR u/s 420 & 406 IPC registered against petitioner is liable to be quashed—Held, yes, would be abuse of process of law—Petition allowed.

Held, that in view of the authority of the Hon'ble Supreme Court of India in *G. Sagar Suri versus State of U.P.* 2000(1) RCR (Criminal) 707, FIR No. 101, dated 10th August, 2004 under Section 420, 406 IPC, P.S. Division No. 2, Ludhiana is quashed and all consequential proceedings arising therefrom are also set aside. This order will not have any effect on the FIR if there are no proceedings pending against the petitioner under Section 138 of the Act.

(Paras 7 & 8)

P.S. Khurana, Advocate, *for the petitioner.*

D.K. Mittal, Deputy Advocate General, Punjab.

MEHTAB S. GILL, J.

(1) This is a petition under Section 482 Cr. P.C. for quashing FIR No. 101, dated 10th August, 2004, under Section 420, 406 IPC, Police Station Division No. 2, Ludhiana and the consequential proceedings arising therefrom.

(2) Learned counsel for the petitioner has argued, that the petitioner is a sole proprietor of M/S H.S. Narang and Sons. The petitioner had business dealing with Jiwan Sales Corporation. The petitioner received a notice of demand from Jiwan Sales Corporation dated 4th August, 2004. Two cheques bearing No. 457182, dated 6th July, 2004 for a sum of Rs. 43,279 and No. 457183, dated 6th July, 2004 for a sum of Rs. 40,000 were issued in favour of Jiwan Sales Corporation, drawn on State Bank of India, Gill Road, Ludhiana. Both the cheques allegedly were dishonoured. In fact none of these cheques were issued by the petitioner in favour of Jiwan Sales Corporation.

(3) Learned counsel has further argued, that for the recovery of amount of Rs. 83,279 as per cheques No. 457182, dated 6th July, 2004 (for a sum of Rs. 43,279) and No. 457183, dated 6th July, 2004 (for a sum of Rs. 40,000) a complaint under Section 138 of the Negotiable Instruments Act (hereinafter called as the Act) was filed, which is still pending. This amounts to double jeopardy. as such, FIR No. 101, dated 10th August, 2004, under Section 420, 406 IPC, Police Station Division No. 2, Ludhiana be quashed.

(4) I have heard the learned counsel for the parties and perused the file.

(5) FIR No. 101, dated 10th August, 2004 was registered under Sections 406/420 IPC for the recovery of the amount of Rs. 83,279 as per cheque No. 457182, dated 6th July, 2004 (for a sum of Rs. 43,279) and cheque No. 457183, dated 6th July, 2004 (for a sum of Rs. 40,000). Proceedings under Section 138 of the Act were also initiated, for the dishonouring of those very cheques.

(6) The Hon'ble Supreme Court of India in **G. Sagar Suri versus State of U.P., (1)**, has held in paragraph 14 as under :—

“14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with a sole purpose of getting the loan due to the Finance Company by browbeating and tyrannizing the appellants of criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do”.

(7) In view of the above authority, Criminal Misc. Petition is allowed. FIR No. 101, dated 10th August, 2004, under Sections 420, 406 IPC, Police Station Division No. 2, Ludhiana is quashed and all consequential proceedings arising therefrom are also set aside.

(8) This order of mine will not have any effect on case FIR No. 101, dated 10th August, 2004, under Sections 420, 406 IPC, Police Station Division No. 2, Ludhiana, if there are no proceedings pending against the petitioner under Section 138 of the Act, in regard to cheque No. 457182, dated 6th July, 2004 for a sum of Rs. 43,279 and cheque No. 457183, dated 6th July, 2004 from a sum of Rs. 40,000.

R.N.R.

(1) 2000 (1) R.C.R. (Criminal) 707