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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 2367/2010 & Crl. M.A. No. 12711/2010 (Stay)**
GURMEET SINGH & ORS Petitioners

Through: Mr. Sudhir Batra, Advocate.

versus

STATE & ORS Respondents

Through: Mr. Manoj Ohri, APP for the State.
Mr. O.P. Sharma, Advocate for
Respondent No. 2.

AND

+ **CRL.M.C. 446/2010 & Crl. M.A. No. 1564/2010 (Stay)**
NARENDER KUMAR Petitioner

Through: Mr. Neeraj Kapoor, Advocate.

versus

SKIPPER BEVERAGES P.LTD. & ANR. Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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17.08.2011

1. By the present petitions the Petitioners seek quashing of Complaint Case No. 364/IP titled as "M/s Skipper Beverages Pvt. Ltd. vs. Shri Gurmeet Singh and others" and the proceedings pursuant thereto whereby they have been summoned for offences punishable under Sections 380/457/471 IPC read with Section 120B IPC.

CRL.M.C. 2367/2010 & 446/2010

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2. Learned counsels for the Petitioners contend that the essential ingredients of Section 378 IPC are not made out as no removal of the property has been alleged. The Petitioners have neither removed the cheques in question nor they have been found to be in possession thereto nor has it been used by them. Moreover, there is no evidence on record to show that the cheques in question have been filled by the Petitioners in their hand writing and thus the complaint and the order summoning them are bad in law.

3. Learned counsel for the Respondent No. 2 on the other hand contends that a perusal of the judgment passed in complaint under Section 138 of Negotiable Instruments Act filed by M/s Mahalaxmi Cold Drinks clearly show that the Petitioners in Criminal M.C. No. 3267/2010 stole the cheques from the Complainant as they were the employees and which were further misappropriated by Mr. Narender Kumar the Petitioner in Crl. M.C. No. 446/2010 on the basis of which a complaint under Section 138 NI Act was filed by M/s Mahalaxmi Cold Drinks against the Respondent No. 2. Learned Trial Court rightly summoned the Petitioner Narender Kumar on the basis of statement of CW1 Pawan Kumar Chopra on an application under Section 319 Cr.P.C. A clear case of conspiracy between the parties is

made out from the evidence on record and hence the present petition is liable to be dismissed.

4. I have heard learned counsel for the parties.

5. Briefly the case of the Respondent M/s Skipper Beverage Pvt. Ltd. in the complaint filed through its Director is that in the course of its business some blank cheques duly signed by Shri Pawan Chopra its Director were kept in the office to be used for withdrawal of money for urgent needs. Subsequently Shri Pawan Chopra came to know that some blank cheques signed by him were missing. One Mr. Kavinder Bains was employed as Sales Manager with the company at the instance of their General Manager Sh. Baljinder Gill and before he left the service from the company in 1997 Shri Baljinder Gill got appointed one Mr. Gurmeet Singh as Manager (Sales) for Punjab/Haryana area since 1996 who was later made General Manager. Shri Gurmeet Singh was removed from the company in May, 2000 as his conduct became suspicious and the company informed its distributors and other concerned with the business of the company that he was no more a part of the company. Shri Gurmeet Singh left the office in disarray and refused to return or account for the valuable security of the company including cheques entrusted to him. Several correspondences were made to him

requesting him to return the original documents as well as cheque No. 683643 updated with no name or party or amount which had been lying blank duly signed by Shri Pawan Chopra. A complaint in this regard was also given to the Bank Manager of Union Bank of India, Pahar Ganj, New Delhi on 19th December, 2000 and the SHO PS Paharganj. The Complainant was shocked to know that on 20th December, 2000 the Chief Manager Union Bank of India, Paharganj sent an intimation to the office of the complainant that Cheque No. 683643 dated 19th December, 2000 was presented for clearance for an amount of Rs. 15 lakhs through their branch office Tohana, Harayana for collection which was returned unpaid for the reasons "attached by office of recovery Haryana". The Complainant company had never issued a cheque wherein the name, figure and other particulars were type written. Further the Complainant company had no transaction with any party at Haryana for the last past three years. Thus, it was apparent that the Petitioners Gurmeet Singh and Kavinder Bains, ex-employees of the company in collusion and conspiracy with each other forged cheques and used it after forging the same.

6. Further after filing of the complaint an application under Section 319 Cr.P.C. was filed for summoning of additional accused, that is, Shri

Narender Kumar the Petitioner in Criminal M.C. No. 446/2010 besides other. It was stated in the application that the cheque in question was misused by M/s Mahalaxmi Cold Drinks through its partner Shri Narender Kumar who filed a complaint case in the Court of Tohana District, Haryana under Section 138 NI Act. The case in Tohana was filed in the year 2001 and finally decided on 3rd September, 2008 wherein the Sub-Divisional Magistrate, Tohana held that blank cheque had come into the hands of the Complainant firm therein which was misused by them and the Complainant in the present complaint was acquitted. Thus on the basis of averments made in the application and on examination of CW1 Pawan Chopra, Director of the Respondent company the learned Trial Court summoned the Petitioner Narender Kumar vide its order dated 18th December, 2009, in addition to Shri Gurmeet Singh and Kavinder Bains who were summoned vide order dated 16th November, 2009.

7. I have gone through the testimony of CW1 Pawan Chopra. In his statement before the Court he has narrated the facts mentioned above and has alleged that the Petitioners Gurmeet Singh and Kavinder Bains, ex-employees of the company in conspiracy with known and unknown persons fraudulently and illegally removed the cheque and made false document by

entering the name and amount in the cheque in the absence of the party. 10
During the course of evidence the relevant complaints and orders have also been produced. On further examination CW1 Pawan Chopra has alleged that Gurmeet Singh and Kavinder Bains who had been removed from their company in collusion with Mahalaxmi Cold Drinks removed the cheque and filed a false case against him in Tohana. He has placed on record certified copy of the judgment passed by the Sub-Divisional Magistrate, Tohana, Haryana as exhibit CW1/10. In a case of conspiracy direct evidence is seldom available, thus the evidence of removal of the property and the use thereby by an individual is prima facie sufficient to show the complicity of the accuseds. A perusal of the statement and the documents on record prima facie disclose the commission of offences mentioned above. Thus I find no infirmity in the orders passed by the learned Trial Court summoning the Petitioners. Thus the contention raised by the Petitioners hold no ground.

8. Petitions and applications are dismissed.

9. Trial Court record be sent back forthwith.


MUKTA GUPTA, J.

AUGUST 17, 2011
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