2025:PHHC:153460

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-61602-2023
Date of Decision:- 07.11.2025

RAVI KUMAR BHATEJA & ANOTHER

.....Petitioners

Vs.

M/S JASBIR COMMISSION AGENT

.....Respondent

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Sandeep Arora, Advocate
for the petitioners.

Mr. Vivek Dahiya, Advocate and
Mr. Anirudh Kaushal, Advocate for
Mr.B.S. Sudan, Advocate
for the respondent.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the complaint No. NACT-210 of 2022 dated 12.07.2022 (Annexure P-1) titled as 'M/s Jasbir Commission Agent vs. M/s Durga Rice Mills and others' under Section 138 of Negotiable Instruments Act, 1881, the summoning order dated 12.07.2022 (Annexure P-2) passed by Judicial Magistrate 1st Class, Patti, vide which petitioners have been summoned to face trial under Section 138 of the Act along with all consequential proceedings arising therefrom.

2. The brief facts of the case are that the accused namely Robin Batra the working partner/authorized signatory of the accused partnership

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concern M/s Durga Rice Mills of which accused Nos.3 & 4 (including petitioner Nos.1 and 2 who are accused Nos.3 and 4 in the complaint) are the other partners, issued a Cheque No.499947 dated 22.03.2022 for an amount of Rs.2,59,273/- in favour of the complainant's firm M/s Jasbir Commission Agent.

3. The aforementioned cheque got dishonoured leading to the issuance of a legal notice. On non-payment of the amount, a complaint was filed under Section 138 r/w Section 141 of the Negotiable Instruments Act. The copy of the complaint dated 12.07.2022 is attached as Annexure P-1 to the petition.

4. Based on the preliminary evidence led, the Court of the Judicial Magistrate, 1st Class, Patti summoned all the accused to face trial vide order dated 12.07.2022. The copy of the summoning order dated 12.07.2022 is attached as Annexure P-2 to the petition.

5. The aforementioned complaint dated 12.07.2022 (Annexure P-1) and summoning order dated 12.07.2022 (Annexure P-2) are under challenge in the present petition.

6. The learned counsel for the petitioners contends that the petitioners were earlier, the partners in the accused firm M/s Durga Rice Mills which was constituted under a Partnership Deed dated 25.09.2017. However, subsequently, the partnership was dissolved on 21.06.2020 and a written dissolution deed was prepared between the petitioners and the other partner namely Robin Batra in which it was duly mentioned that Robin Batra along with the petitioners who were carrying on the business of purchase,

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sale and husking of paddy and rice in the name and style of M/s Durga Rice Mills at Fazilka were exiting from the partnership and therefore, the dissolution deed dated 22.06.2020 duly signed by the continuing partner Robin Batra as well as retiring partners Ravi Kumar and Surinder Kumar (petitioners) was prepared. A written information of the dissolution was also sent to the Register of Firms maintained under Section 59 of the Indian Partnership Act. After the dissolution of the partnership between the petitioners and Robin Batra, Robin Batra entered into a partnership deed with Mona Rani on 22.06.2020. The cheque is dated 22.03.2022 and was signed by Robin Batra on behalf of the accused No.1-M/s Durga Rice Mills. The petitioners had duly responded to the legal notice apprising the complainant that they had got no concern with M/s Durga Rice Mills having exited from the partnership. Despite the said fact having been brought to the notice of the complainant, the petitioners were still arrayed as accused in the complaint and they have been summoned to face trial. He contends that the Directors/Partners who cease to remain so which fact has been duly communicated to the statutory authorities and against whom in the complaint no specific allegations have been levelled regarding the role played by them cannot be summoned to face trial. Therefore, the instant complaint dated 12.07.2022 (Annexure P-1) and summoning order dated 12.07.2022 (Annexure P-2) are liable to be quashed qua the petitioners. Reliance is placed on the judgments in the cases of ***Bijoy Kumar Moni Versus Paresh Manna & another, 2025(1) RCR (Criminal) 265***, ***Ajay Aggarwal Vs. M/s Integrated Finance Company Ltd., Criminal Appeal***

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Nos.586-594 of 2018, ***Gunmala Sales Pvt. Ltd. Versus Anu Mehta & others, 2015(1) RCR (Criminal) 54***, ***Harshendra Kumar D. Versus Rebatilata Koley etc., 2011 AIR Supreme Court 1090*** and ***Mrs. Anita Malhotra Versus Apparel Export Promotion Council & another, 2011(4) RCR (Criminal)***.

7. The learned counsel for the respondent-complainant, on the other hand, while not denying the factum of the petitioners having exited the partnership contends that once there are specific averments in the complaint regarding the role played by an accused, then whether he is a partner/Director or not, it would be a matter of trial as to the culpability of such Director/Partner. In the instant case, there are specific allegations levelled in the complaint that the accused carrying on the business of sale and purchase of paddy crops and rice from the market and accused No.2 to 4 is authorised/partner/administrator of accused No.1-M/s Durga Rice Mills, Malout Road (Link Road Village Korian Wali) District Fazilka. Therefore, the present petition is liable to be dismissed. Reliance is placed on the judgment in the case of ***Shivappa Reddy Versus S. Srinivasan, 2025(3) RCR (Criminal) 264***.

8. I have heard the learned counsel for the parties.

9. Before proceeding further in the matter, it would be apposite to examine the judgments referred to by the learned counsel for the petitioners and they are discussed hereinbelow:-

In ***Bijoy Kumar Moni*** (supra), the Hon'ble Supreme Court held as under:-

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> *"46. The authorised signatory is merely the physical limb that signs and makes the cheque on behalf of the company's incorporeal personality. The company, for all purposes, continues to remain the drawer of the cheques. If the interpretation as being canvassed by the complainant is accepted then even an employee of the Company, who on account of his being an authorized signatory signs a cheque issued by the Company towards discharge of the debt or other liability of the Company, would be liable to prosecution and conviction under Section 138 of NI Act even after he resigns from the company and is no more in its employment. This certainly could not have been the intention of the legislature. Even the vicarious liability created under Section 138 of NI Act would not be attracted in respect of a Director or an employee of the Company who resigns and severs his connections with the company, unless the complainant is able to bring his case within the purview of sub-Section 2 of Section 141, by proving that the offence had been committed with his consent or connivance or was otherwise attributable to any neglect on his part."*
>
> *(Emphasis supplied)*

In ***Ajay Aggarwal*** (supra), the Hon'ble Supreme Court held as under:-

> *"2. In the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881, the appellant is also impleaded as one of the accused on the ground that he was the Director of the accused-company which had issued the cheque.*
>
> *3. The case set up by the appellant before the trial Court was that he had resigned as Director of the company much before the cheque was dishonoured and the factum of resignation was proved by filing certified copy of Form No.32 which was sub-*

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mitted before the Registrar of Companies on a date before the cheque was presented and dishonoured. He refers to the judgment of this Court in 'Anita Malhotra v. Apparel Export Promotion Council and Anr.' [(2012) 1 SCC 520] wherein it is held that annual return along with Form No. 32 which is filed before the Registrar of Companies is a public document and certified copy thereof was admissible in evidence and that it should have been looked into and acted upon by the trial Court.

4. Having regard to the aforesaid law laid down by this Court, these appeals are allowed and the appellant is deleted from the array of parties/accused in the trial pending in CC. No. 2362/1999, CC. No. 1854/2000, CC. No. 2201/1999, CC. No. 6633/1999, CC. No. 2445/1999, CC. No. 4200/1999 and CC. No. 5344/2000 titled as 'Integrated Finance Company Limited v. M/s. Trident Steels Limited and Ors.'."

(Emphasis supplied)

In ***Gunmala Sales Pvt. Ltd.*** (supra), the Hon'ble Supreme Court held as under:-

"33. We may summarise our conclusions as follows :

a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

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c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

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34. We will examine the facts of the present case in light of the above discussion. In this case, the High Court answered the first question raised before it in favour of the respondents. The High Court held that "in the complaint except the averments that the Directors were in charge of and responsible to the company at the relevant time, nothing has been stated as to what part was played by them and how they were responsible regarding the finances of the company, issuance of cheque and control over the funds of the company". After so observing, the High Court quashed the proceedings as against the respondents. In view of this conclusion, the High Court did not go into the second question raised before it as to whether the Director, who has resigned can be prosecuted after his resignation has been accepted by the Board of Directors of the company. Pertinently, in the application filed by the respondents, no clear case was made out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the company by referring to or producing any uncontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the Directorship of the company on 30/9/2010 but no uncontrovertible or unimpeachable evidence was produced before the High Court as was done in Anita Malhotra to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order passed by the High Court quashing the process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that

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making her stand the trial would be an abuse of process of the court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment. In the circumstances, we confirm the impugned order to the extent it quashes the process issued against Shobha Mehta, an accused in C.C. No. 24035 of 2011. We set aside the impugned order to the extent it quashes the process issued against other Directors viz. Kanhaiya Lal Mehta, Anu Mehta and Siddharth Mehta. We remit the matter to the High Court. We request the High Court to hear the parties and consider the matter afresh. We are making it clear that we have not expressed any opinion on the merits of the case and nothing said by us in this order should be interpreted as our expression of opinion on the merits of the case. The High Court is requested to consider the matter independently. Considering the fact that the complaints are of 2011, we request the High Court to dispose of the matter as expeditiously as possible and preferably within six months."

(Emphasis supplied)

In ***Harshendra Kumar D.*** (supra), the Hon'ble Supreme Court held as under:-

"15. Every company is required to keep at its registered office a register of its directors, managing director, manager and secretary containing the particulars with respect to each of them as set out in clauses (a) to (e) of sub-section (1) of Section 303 of the Companies Act, 1956. Sub-section (2) of Section 303 mandates every company to send to the Registrar a return in duplicate containing the particulars specified in the register. Any change among its directors, managing directors, managers or secretaries specifying the date of change is also required to be furnished to the Registrar of Companies in the prescribed form within 30 days of such change. There is, thus, statutory requirement of informing the Registrar of Companies about

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change among directors of the company. In this view of the matter, in our opinion, it must be held that a director - whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies - cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation. The words 'every person who, at the time the offence was committed', occurring in Section 141 (1) of the Negotiable Instruments Act are not without significance and these words indicate that criminal liability of a director must be determined on the date the offence is alleged to have been committed.

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18. On March 4, 2004, the Company informed the Registrar of Companies in the prescribed form (Form No. 32) about the resignation of the appellant from the post of Director of the Company and, thus, change among directors.

19. The above documents placed on record by the appellant have not been disputed nor controverted by the complainants. As a matter of fact, it was not even the case of the complainants before the High Court that the change among Directors of the Company, on resignation of the appellant with effect from March 2, 2004, has not taken place. The argument on behalf of the complainants before the High Court was that it was not permissible for the High Court to look into the papers and documents relating to the appellant's resignation since these are the matters of defence of the accused person and defence is a matter for consideration at the trial on the basis of evidence which cannot be decided by the High Court. The complainants in this regard relied upon a decision of Single Judge of that Court in the case of Fateh Chand Bhansali. The counsel for the present appellant (revision petitioner therein) on the other hand referred to a later decision of a Single Judge of the Calcutta High Court in the case of Saroj Kumar Jhunjhunwala v. State of West Bengal and Anr., (2007) 1 C Cr. LR (Cal) 793 wherein it was held that if before the issuance of cheques, the accused had resigned from the directorship, then he cannot be

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held liable for the offence. Confronted with two Single Bench decisions of that Court in Fateh Chand Bhansali and Saroj Kumar Jhunjhunwala, the Single Judge held that the judicial discipline demanded that he should go by the earlier decision, namely, Fateh Chand Bhansali and, accordingly, refused to take into consideration the documents relating to the appellant's resignation as Director from the Company with effect from March 2, 2004. While relying upon Fateh Chand Bhansali, the Single Judge referred to a decision of this Court in State of Madhya Pradesh v. Awadh Kishore Gupta and Others, 2004(1) RCR (Criminal) 233 : 2004(2) Apex Criminal 158 : (2004) 1 SCC 691 which was referred in Fateh Chand Bhansali .

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21. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

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> *22. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company. As noticed above, the appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the appellant had resigned from the post of Director of the Company. The acceptance of appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the appellant, it would result in gross injustice to the appellant and tantamount to an abuse of process of the court."*
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> (Emphasis supplied)

In ***Mrs. Anita Malhotra*** (supra), the Hon'ble Supreme Court held as under:-

> *"14. Inasmuch as the certified copy of the annual return dated 30.09.1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with section 74(2) of the Indian Evidence Act, 1872, we hold that the appellant has validly resigned from the Directorship of the Company even in the*

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year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.

15. This Court has repeatedly held that in case of a Director, complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused Company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. [Vide National Small Industries Corporation Limited v. Harmeet Singh Paintal and Another, 2010(2) RCR (Criminal) 122 : 2010(2) Recent Apex Judgments (R.A.J.) 22 : (2010)3 SCC 330]. In the case on hand, particularly, in para 4 of the complaint, except the mere bald and cursory statement with regard to the appellant, the complainant has not specified her role in the day to day affairs of the Company. We have verified the averments as regard to the same and we agree with the contention of Mr. Akhil Sibal that except reproduction of the statutory requirements the complainant has not specified or elaborated the role of the appellant in the day to day affairs of the Company. On this ground also, the appellant is entitled to succeed.

16. In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as certified copy of annual return dated 30.09.1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings. We are unable to accept the reasoning of the High Court and we are satisfied that the appellant has made out a case for quashing the criminal proceedings. Consequently, the criminal complaint No. 993/1 of 2005 on the file of ACMM, New Delhi, insofar as the appellant herein (A3) is quashed and the appeal is allowed."

(Emphasis supplied

10. A perusal of the aforementioned judgments would show that

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where a partner in a firm or a Director in a company has resigned and the said fact has been brought to the notice of the statutory authorities and no specific role of such Partner/Director has been enumerated in the complaint but only the necessary statutory averments are made that the Partner/Director is incharge and responsible for the day-to-day running of the company, then, proceedings qua such Partner/Director who has resigned from the partnership/company cannot be allowed to continue and ought to be quashed.

11. It would be apposite to examine the averments qua the petitioners in the complaint dated 12.07.2022 (Annexure P-1). The relevant paragraphs of the complaint are extracted below:-

> "3 . *That the accused are carrying on the business of sale and purchase of Paddy crops and Rice from the market and accused Nos.2 to 4 is authorised signatory/Partners/Administrator of accused no.1 i.e. M/s Durga Rice Mills Malout Road (Link Road Village Korian Wali) District Fazilka.*
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> *** *** ***
>
> *5.That on demanded of the above said amount the accused issued one cheque bearing No."499947" dated 22.03.2022 of Rs.2,59,273/- drawn at Oriental Bank of Commerce Gaushala Road Branch Fazilka, District Fazilka against accused bank account bearing No.02755016001840 of M/s Durga Rice Mills for your legal liability and you accused No.2 Robin Batra signed the above said cheque being the authorized signatory/Managing Partner of M/s Durga Rice Mills firm in the presence of my complainant and witnesses.*
>
> *6.That at the time of issuing of cheque the accused nos.2 to 4 also assured to complainant on behalf of accused no.1 that the above said cheque will definitely be honoured on its presentation. The complainant believed on assurance given by the accused.*

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12. Coming back to the facts of the present case, it is relevant to note that the petitioners had resigned from the partnership on 21.06.2020 and a dissolution deed was prepared on 22.06.2020 (Annexure P-3). A communication with respect to the cessation of the petitioners as partners was also made in Form 'A' (Rule 5) in the Register of Firms maintained under Section 59 of the Indian Partnership Act to the statutory authority (Annexure P-4). Thereafter, a new partnership deed was prepared with Robin Batra, the signatory of the cheque in question along with one Mona Rani to the extent of 50% each (Annexure P-5). The cheque in question was issued much later on 22.03.2022. The same came to be dishonoured on 09.05.2022. A legal notice was sent by the complainant on 01.06.2022. The petitioners replied to the same claiming to have resigned from the partnership. Despite that fact, having been brought to the notice of the complainant, the complaint was filed levelling allegations of the cheque having been issued with the knowledge and consent of the petitioners.

13. Further, the averments made in the complaint qua the petitioners in para Nos.3, 5 and 6 (supra) do not further the case of the complainant inasmuch as there are only omnibus allegations that the accused Nos.2 to 4 (the petitioners being accused Nos.3 and 4 in the complaint) were the authorised signatory/partner/administrator and that the said accused had assured the complainant that the cheque would be honoured on its presentation. These averments are presumptive and ambiguous with a view to inculpate. Therefore, apparently, the culpability of the petitioners is not made out.

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14. The judgment in the case of **Shivappa Reddy** (supra) cited by the learned counsel for the respondent-complainant will not apply to the facts of the present case. In the said case, the Hon'ble Supreme Court held that the accused who had pleaded that he had ceased to be a partner of the accused firm did not comply with the statutory mandate of furnishing information about his resignation to the appropriate authority. It has been further held that the accused who claimed to have resigned from the partnership was alleged to have been present at the house of the accused signatory when the cheques therein had been signed. It was in that situation that the Hon'ble Supreme Court held that it would be a matter of trial as regards the culpability of the accused who had claimed to have resigned from the partnership therein.

15. In view of the aforementioned discussion, I find considerable merit in the present petition. Therefore, the complaint dated 12.07.2022 (Annexure P-1), the summoning order dated 12.07.2022 (Annexure P-2) and all consequential proceedings arising therefrom stand quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

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Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***

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