

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No.M-13067 of 2014 (O&M)
Date of Decision: July 30, 2015.**

Naveen Kumar

.....PETITIONER(s).

VERSUS

M/s HV Warehouse LLP and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jai Singh Yadav, Advocate
for the petitioner (s).

Mr. D. Hasija, Advocate
for respondent No.1-complainant.

SURINDER GUPTA, J.

The petitioner has sought quashing of the complaint under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 and the summoning order passed by Judicial Magistrate, Rewari vide which the petitioner along with respondents No.2 to 4 was ordered to be summoned by the trial Court.

Complaint (Annexure P-1) was filed by respondent No.1 against Poonam Super Multi-Specialty Hospital Private Limited and its Director-respondent No.2 Rajesh Sharma, respondent No.3 Santosh Kumar Sharma and petitioner Naveen Kumar. It is specifically pleaded in the complaint that all the Directors are incharge and are responsible for the business of respondent No.2 and its day to day affairs. For the project

of respondent No.2-firm, a MOU was executed on 19.01.2012 between the accused and the complainant and as per the terms of said MOU, the complainant firm paid a sum of ₹21 lacs as interest free refundable security to the accused, which was to be refunded at the time of transfer of total land by the complainant firm to the accused persons. The accused persons gave a counter guarantee cheque bearing No.622140 drawn at Oriental Bank of Commerce, Dharuhera Road, Rewari to the complainant company. The said cheque was to be presented by the complainant firm without notice to the accused persons in case of any delay or default on their part. They also issued a post dated cheque bearing No.622141 dated 24.03.2012 for ₹2 crores drawn on Oriental Bank of Commerce, Dharuhera Road, Rewari as advance payment for procurement of the land as per terms of the MOU and the cheque was to be presented after two months from the date of the said MOU. However, due to the lapse on the part of the accused, the terms of MOU dated 19.01.2012 were amended to grant further extension till 03.05.2012 to the accused for arranging the advance money of ₹2 crores, subject to the condition that they will issue a cheque of ₹30 lacs in favour of the complainant firm which include the amount of ₹21 lacs plus interest and charges amounting to ₹9 lacs. Later on, when cheque No.622141 was presented for encashment on 12.06.2012 and it was dishonoured. The cheque No.622146 dated 03.05.2012 for ₹30 lacs was also presented for encashment but it was also dishonoured by the bank. After fulfilling the required formalities, instant complaint was filed. The petitioner has sought quashing of the complaint inter-alia pleading as follows:-

- (i) he was not a signatory to the cheques;
- (ii) he was not responsible for conduct of business of the company;
- (iii) he had already resigned from directorship of the company prior to the execution of Memorandum of Understanding (MOU-for short) dated 19.01.2012;
- (iv) petitioner is a Chartered Accountant and worked with respondent M/s Poonam Super Multi-Specialty Hospital Private Limited as Director till 29.03.2011 when he resigned and his resignation was accepted on the same day;
- (v) In reply to the legal notice served on the petitioner by respondent No.1, he had replied and clarified his position;
- (vi) The dispute pertains to the MOU dated 19.01.2012 to which petitioner is neither a signatory nor a party.

Referring to the resignation letter (Annexure P-2), learned counsel for the petitioner has argued that petitioner had resigned as Director of M/s Poonam Super Multi-Specialty Hospital Private Limited on 29.03.2011 and on the same day, his resignation was accepted vide letter (Annexure P-3).

Admittedly, no information was given about this resignation to the Registrar of Companies.

Learned counsel for respondent No.1-complainant submits that on the website of Registrar of Companies, the petitioner continues to be the Director of respondent No.2 firm, as such, the documents (Annexure P-2 and P-3) are just paper transactions created by the petitioner. Moreover, it is a question of fact, which he can prove in the trial Court but no such evidence has been produced on record. The complainant has concluded its evidence before the trial Court. The case is

fixed for statement of accused under Section 313 Code of Criminal Procedure (Cr.P.C.-for short). Against his summoning order, the petitioner has not filed any revision. He has not challenged the notice of accusation served on him, rather has cross-examined all the witnesses examined by the complainant. It was at the very late stage, when case was fixed for recording statements of accused under Section 313 Cr.P.C. that he came up with this petition seeking quashing of the complaint and summoning order dated 06.10.2012 withholding this fact that the entire evidence before the trial Court was already complete. Thereafter, he has held up the proceedings before the trial Court on the pretext that he has filed this Criminal Miscellaneous Petition. In the complaint, the complainant has specifically averred that the petitioner is the Director of M/s Poonam Super Multi-Specialty Hospital Private Limited and is incharge and responsible for the conduct and business and day to day affairs of the company along with other Directors. The resignation, if any, submitted by the petitioner was never brought to the notice of general public or necessary intimation was given to the Registrar of Companies.

Learned counsel for the petitioner has relied on **Saumil Dalip Mehta Vs. State of Maharashtra and others 2002 AIR (Bombay) 194** and has argued that after the resignation by the petitioner, it was the duty of the Companies Secretary and not of the individual Director to send due intimation and information to the Registrar of Companies.

In the aforesaid case, the petitioner had raised the plea that he had resigned from the post of Director of M/s Arihant Agro Products Limited. The company accepted the resignation and a note to that effect

was published and printed in the balance sheet, presented for the annual general meeting of the company. His resignation was also mentioned in the Director's report. It was on the basis of said documentary evidence that the Bombay High Court quashed the order of attachment of property of the Director for recovery of the payable amount by M/s Arihant Agro Products Limited. The observations in the said citation are, in no manner, applicable to the facts of the present case.

In the instant case, it is submitted that evidence has already been concluded before the trial Court and the case was at the stage of recording statements of petitioner and other co-accused named in the complaint, under Section 313 Cr.P.C. There is specific averment in the complaint that on the representation of the petitioner and other co-accused, the MOU was signed. The mere fact that the cheque issued by respondent No.2 and the MOU signed by respondent No.2 do not bear the signature of petitioner, make out no case for quashing of the complaint and summoning order at this stage when the evidence of complainant has already been concluded.

When the entire evidence before the trial Court is complete, it is not appropriate to record finding on the contention of petitioner that he was not the Director of the company at the time of issuance of cheque or was not responsible to the company for the conduct of its business. All these facts will be evaluated by the trial Court on the basis of evidence on record. The petitioner has not come up with any explanation as to what prevented him from filing the revision against the order dated 06.10.2012 vide which he was summoned to face the trial and against the order vide

which he was served with notice of accusation. He preferred this petition at a very belated stage when the evidence had already been concluded by the complainant.

Keeping all the above facts and circumstances in view, this petition has no merits and is dismissed. It is, however, made clear that nothing contained in this order shall have any bearing on the merits of the complaint or shall be taken as expression of opinion of this Court on any issue to be dealt with and decided by the trial Court.

Keeping in view the fact that the complaint is pending for the last about three years, the trial Court is directed to expedite the disposal of the complaint, preferably within six months on receipt of copy of this order.

Copy of this order be conveyed to the trial Court for compliance.

July 30, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE