

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-29102 of 2015
Date of Decision:- 24.09.2015

Shanti Devi

....Petitioner

Versus

M/s Bahubali Overseas Pvt. Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Ravish Bansal, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition for quashing of criminal complaint bearing Case No.1104/2014 titled as M/s Bahubali Overseas Private Limited Vs. Sonia Overseas (P) Ltd. etc., under Sections 138 and 142 of the Negotiable Instruments Act and also quashing of summoning order dated 19.12.2014, passed by Judicial Magistrate, 1st Class, Panchkula, whereby the petitioner was summoned to face trial under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'The Act').

2. Relevant facts of the case that complaint under Section 138 of 'The Act' was filed by respondent firm on the ground that cheque bearing No.019004 of ₹40 lacs was issued by the present petitioner with the assurance that the same would be encashed on presentation. However, the same cheque was returned back with the remarks “Exceeds Arrangement”.

Legal notice was issued and thereafter complaint was filed. Learned Magistrate passed the order dated 19.12.2014 for summoning of petitioner as an accused.

3. Learned counsel for the petitioner submitted the present complaint as well as summoning order dated 19.12.2014 (Annexure P-6) are not maintainable over the petitioner because petitioner Shanti Devi is not a signatory to the cheque. Otherwise she is an old lady of 70 years and not the incharge of the day to day working, business and affairs of M/s Sonia Overseas Pvt. Ltd. Hence, no criminal proceedings against the petitioner are maintainable. Otherwise also, summoning order dated 19.12.2014 is extremely sketchy and cryptic and not even a single fact of the present case was noticed or referred rather the same was passed in a routine and mechanical manner without application of any judicious mind.

4. Learned counsel for the petitioner placed reliance upon judgment from Hon'ble Supreme Court in case **Gurmala Sales Private Ltd. Vs. Anu Mehta and others**, 2015(1) P.L.J.R. (SC) 129 that such a complaint is not maintainable even simply being Director in a Company because one is not supposed to discharge particular functions on behalf of the company. The role of a Director in a Company is a question of fact depending on the peculiar facts in each case. Reliance was also placed upon judgment from Hon'ble Supreme Court in case **Harshendra Kumar D. Vs. Rebatilata Koley etc.**, 2011(3) SCC 351, wherein Hon'ble Supreme Court observed that if a cheque issued by a company and plea taken that one of the Directors that he had resigned before the date of issuance of cheque and his resignation was duly accepted and notified, such person

cannot be made accountable and the liability cannot be fastened upon him. On the same point, reliance placed upon judgment from Hon'ble Supreme Court in case **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another**, 2010(2) JT 161.

5. While arguing on the point of maintainability of present petition under Section 482 Cr.P.C., learned counsel for petitioner submitted that although the alternative remedy by way of filing of revision petition under Section 319 Cr.P.C is available but present petition under Section 482 Cr.P.C. for quashing of summoning order is also maintainable and such a petition cannot be dismissed on this ground.

6. Having considered the above submissions, this Court of the considered view that the present petition under Section 482 Cr.P.C. is maintainable in such like cases. Now coming to the facts of the case, petitioner has come with the plea that she is an old lady and is suffering from multiple ailments like heart problem and spine injury and was not keeping good health. She decided to resign from the Board of Directors of M/s Sonia Overseas Pvt. Ltd. on 06.02.2014 (Annexure P-1). Her resignation was accepted in the Board meeting on 06.02.2014, vide resolution (Annexure P-2). Required information was sent to the Ministry of Corporate Affairs by filling online Form 32 (Annexure P-3) on 14.2.2014 along with requisite payment of ₹500/-, vide payment receipt (Annexure P-4). As such, petitioner ceased to be Director of M/s Sonia Overseas Pvt. Ltd. on 06.02.2014. She is not the signatory to the cheque. The alleged cheque bearing No.019004 of ₹40 lacs is dated 22.10.2014. On the date of issuance of cheque the petitioner was not the Director of M/s

Soni Overseas Pvt. Ltd. She was not the signatory to the cheque and as per law laid down by Hon'ble Supreme Court in Gurmala Sales Private Ltd. Vs. Anu Mehta and others; Harshendra Kumar D. Vs. Rebatilata Koley etc. and National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another, cases (supra), the present complaint was not maintainable qua present petitioner. Learned trial Magistrate has completely ignored this fact while passing the summoning order. As such, the present petition is accepted and summoning order dated 19.12.2014 and complaint bearing Case No.1104/2014 titled M/s Bahubali Overseas Private Limited Vs. Sonia Overseas (P) Ltd. etc., stands set aside qua present **petitioner Shanti Devi only**.

7. However, the complaint shall proceed against remaining,

September 24, 2015
naresh.k

(**SHEKHER DHAWAN**)
JUDGE