

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M No. 29998 of 2015

Date of decision: - 17.09.2015

Om Parkash Khullar

...Petitioner

Versus

Himachal Pradesh State Electricity Board Ltd.

..Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Anmol Rattan Sidhu, Senior Advocate,
with Mr. Gagandeep Jammu, Advocate
for the petitioner.

SHEKHER DHAWAN

Present petition under Section 482 Cr.P.C. for quashing of complaint bearing case No.764/2014 dated 16.10.2014 (Annexure P-3) and subsequent proceedings arising out of said complaint as well as summoning order dated 06.04.2015 (Annexure P-4).

2. Relevant facts of the case that electricity connection was applied by M/s Gilvert Ispat and the connection for supply of electricity to Ispat (Steel Manufacturing) Unit was released. The said unit was managed by three partners, namely, Om Parkash Khullar (present petitioner), Umesh Moudgil and Abhin Moudgil, to pay the permanent energy bills. Cheque was issued by Abhin Moudgil and the cheque was issued from M/s Gilvert Ispat and Gilvert Ispat, which is a separate partnership firm. Petitioner Om

partnership firm, which is different from M/s Gilvert Ispat and Gilvert Ispat. Petitioner Om Parkash Khullar was never Partner/Director/Trustee/Agent/Manager or anything in the firm M/s Gilvert Ispat and Gilvert Ispat. Cheque was issued by the firm was dishonored and demand notice was issued. However, no demand notice was issued upon petitioner.

3. Learned counsel for the petitioner contended that petitioner had actually retired on 15.05.2005 from the firm and thereafter a new partnership deed was executed, in which Umesh Moudgil and Abhin Moudgil were partners. Deed of retirement and new partnership deed dated 15.05.2005 are Annexures P-5 and P-6. Trial Court failed to appreciate the facts while passing the summoning order that after 15.05.2005 petitioner had no concern with the dealings and affairs of the firm. Petitioner had repeatedly informed the authorities regarding his no role. Petitioner is neither the drawer nor the signatory of the cheque. The complaint and summoning order against him are not maintainable and the same are misuse of the process of the Court. As such, complaint (Annexure P-3) and summoning order (Annexure P-4) against present petitioner be quashed.

4. As regards to maintainability of main petition under Section 482 Cr.P.C., especially when petitioner has remedy of revision petition is maintainable, to challenge the summoning order. Learned counsel for petitioner contended that only effective remedy is by way of present petition under Section 482 Cr.P.C., as the same provisions empower this Court to interfere in such like cases of grave injustice. Reliance was placed upon judgment from Hon'ble Supreme Court in case **Dr. Sharda Prasad Sinha**

Vs. State of Bihar, 1977(1) SCC 505 that if allegations set out in the

for the High Court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, to quash the order passed by the Magistrate taking cognizance of the offence. Similar view was taken by Hon'ble Supreme Court in cases Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, (1998) 5 SCC 749; Dhariwal Tobacco Products Limited and others Vs. State of Maharashtra and another, (2009) 2 SCC 370; M.A.A. Annamalai Vs. State of Karnataka and another, 2011 CriLJ 692; and V.P. Shrivastava Vs. Indian Explosives Ltd. and others, 2010(10) SCC 361.

5. In case Punjab State Warehousing Corporation, Faridkot Vs. Shree Durga Ji Traders and others, (2011) 14 SCC 615, Hon'ble Supreme Court while discussing the scope of under Section 482 Cr.P.C. and alternative remedy by way of revision petition under Code of Criminal Procedure observed that provision of under Section 482 Cr.P.C. is not an absolute bar to entertaining a petition under Section 482.

6. In view of the above, this Court proceeds further that present petition under Section 482 Cr.P.C. is maintainable.

7. As the main contention of learned counsel for petitioner that petitioner Om Parkash Khullar actually retired on 15.05.2005 and earlier deed of partnership was dissolved and fresh deed of partnership was prepared. As per fresh deed of partnership Umesh Moudgil and Abhin Moudgil are two partners and petitioner Om Parkash Khullar decided to retire from partnership firm. The intimation regarding the said new partnership deed was sent to Registrar of Firms, U.T. Chandigarh (Annexure P-8) and as per form 'A' (Annexure P-9), Umesh Moudgil and

petitioner. Petitioner is not the signatory to the cheque and as such he is not liable for the acts of the firm mainly on the ground that he was not the partner on the date of issuance of cheque and certainly he was not signatory of the cheque in question. Such a law was laid down by Hon'ble Supreme Court in cases S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another, 2007(2) Crimes 183; National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another, 2010(2) JT 161 and Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011(3) SCC 351.

8. In view of the above, present petition under Section 482 Cr.P.C. accepted thereby quashing the complaint case No.764/2014 dated 16.10.2014 (Annexure P-3) titled "Himachal Pradesh State Electricity Board Vs. M/s Gilvert Ispat and others" and summoning order dated 06.04.2015 (Annexure P-4) qua petitioner **Om Parkash Khullar only**.

September 17, 2015

naresh.k

(SHEKHER DHAWAN)

Judge