IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. M-35870 of 2010 (O&M)
Date of Decision: 17.11.2015.

Ashoke Mal Bafna ....Petitioner

Vs.

M/s Upper India Steel Mfg. and Engg. Co. Ltd. ......Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. R.K.Chugh, Advocate
for the petitioner.

Mr. Vikram Chaudhari, Senior Advocate with
Ms. Alka Sarin, Advocate
for the respondent.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('*Cr.P.C.*' for short) for quashing of complaint (Annexure P-6) and all the subsequent proceedings arising therefrom including the summoning order dated 9.4.2008 (Anenxure P-7).

Learned senior counsel for the petitioner has submitted that the petitioner had resigned as a Director of the company with effect from 2.1.2006. The said resignation was accepted on 24.3.2006 vide Annexure P-2. The cheques in question were issued after the petitioner had resigned as a Director.

Learned senior counsel for the respondent, on the other hand, has opposed the petition and has submitted that in fact, the amount in question was due since the year 2004. At that time, petitioner was the Director of the company. A letter was written to Coventry Springs and Engineering Company Limited ('*Company*' for short) on 16.12.2004 to make the outstanding payment. Petitioner vide letter dated 28.12.2004 had replied that the cheques qua the outstanding amount had already been sent. Thereafter vide letter dated 9.7.2005, the earlier cheques to the tune of ₹ 67.49 lacs were replaced by issuing new cheques. Thereafter, again vide letter dated 1.1.2006, fresh cheques were issued qua the outstanding amount.

Case of the complainant, as per the complaint (Annexure P-6), in brief, is that nine cheques in the sum of ₹ 8,00,000/- each and one cheque in the sum of ₹ 9,40,780.05 paisa had been issued by the accused in favour of the complainant with regard to discharge of their legal debt. However, when the said cheques were presented for encashment, they were dishonoured by the bank with remarks 'insufficient funds' vide memo dated 24.8.2006. Despite issuance of legal notice, accused had failed to make the payment of the amount in question. Hence, the complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed against the accused.

Complainant led its preliminary evidence in support of its case. Vide order dated 9.4.2008 (Annexure P-7), accused were summoned to face the trial. Although, the case of the petitioner is that he had retired from the company as a Director before issuance of cheques in question but as per the reply submitted by the complainant, letter Annexure R-2 dated 28.12.2004 had been issued by the petitioner that the cheques had been issued in favour of the complainant qua the outstanding amount. Vide Annexure R-3, the company had sent a letter to the complainant that the cheques amounting to ₹ 67,49,780.05 paisa were being sent in replacement against the cheques lying with the complainant as their validity was expired. It was also prayed that the old cheques lying with the complainant be sent for cancellation. A perusal of Annexure R-4 reveals that on 9.7.2005, another letter was written by the company that fresh cheques in the sum of ₹ 67,49,780.05 paisa were being issued in replacement of the cheques lying with the complainant. It was also prayed that old cheques be returned by the complainant for cancellation. Thereafter on 1.1.2006, fresh cheques to the tune of Rs. 67,49,780.05 were issued by the company in replacement of the old cheques. The said fact is evident from Annexure P-5.

Thus, in the present case, although, the cheques in question had been issued after the resignation submitted by the petitioner as a Director of the company but the fact remains that the cheques in question had been issued in lieu of the cheques issued during the tenure of the petitioner as a Director. Thus, in the present case, disputed questions of fact are involved which can be gone into by the Trial Court. This Court while exercising jurisdiction under Section 482 Cr.P.C. cannot assume the jurisdiction of the Trial Court.

Hence, no ground for quashing of the complaint in the facts and circumstances of the present case is made out.

Petitioner would be at liberty to take up all the pleas available to him during trial.

Dismissed.

(SABINA)
JUDGE

November 17, 2015
Gurpreet