REPORTABLE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-34894-2013 (O&M)

Date of Decision: January 9, 2015

Moti Masand

...Petitioner

Versus

Ms. Lokesh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. A.P.S. Deol, Senior Advocate,
with Mr. Davinder Bir Singh, Advocate, and
Ms. Sagarika, Advocate,
for the petitioner.

Mr. Rajiv Sharma, Advocate,
for respondent No. 1.

Mr. Gurdas Singh, DAG, Haryana,
for respondent No. 2.

NARESH KUMAR SANGHI, J. (Oral)

1. Prayer in this petition, filed under Section 482 read with Section 483, Cr.P.C., is for quashing of Complaint No. 1174, dated 25.5.2007 (Annexure P-1), titled as "Ms. Lokesh v. M/s Vipul Ltd. and another", for the offence punishable under Section 138 of the

Negotiable Instruments Act, 1881 (for brevity, 'the Act'), as well as the summoning order dated 21.8.2013 (Annexure P-3), passed by learned Judicial Magistrate Ist Class, Faridabad.

2. Learned senior counsel for the petitioner has raised the following two contentions:-

(i) That the land in question for which the cheque was issued, was under acquisition; and

(ii) That the petitioner had resigned from the Directorship of the Company, i.e. M/s Vipul Ltd., before bouncing of the cheque and, as such, he could not be prosecuted.

3. I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

4. As per the allegations levelled in the complaint (Annexure P-1), the complainant (respondent No. 1), Ms. Lokesh, was resident of village Baroli, Tehsil and District Faridabad (Haryana). She was owner and in possession of agricultural land situate within the revenue estates of two villages, namely, Baroli and Bhatola, Tehsil and District Faridabad. M/s Vipul Ltd., 3rd Floor, Global Arcad, Mehrauli-Gurgaon Road, Gurgaon, through its Director, Moti Masand (petitioner), purchased the land of the

complainant/respondent No. 1 and in that regard executed an agreement to sell and a collaboration deed with complainant. The petitioner, under his signature, issued Cheque No. 568584, dated 31.10.2006, amounting to Rs. 4,52,025/-, in favour of the complainant/respondent No. 1, payable with the Indian Overseas Bank, Safdarjung Enclave, New Delhi.

5. At the time of issuance of the said cheque, the petitioner and his co-accused had assured the complainant/respondent No. 1 that the same shall be honoured on presentation. However, on presentation the said cheque was returned by the bank to present once again and, as such, the said cheque was presented once again on 13.4.2007, but the same was dishonoured with the remarks that "Payment Stopped by Drawer" on 16.4.2007.

6. After receipt of the said information, the complainant/respondent No. 1 issued a legal notice dated 28.4.2007 upon the petitioner and his co-accused for making the payment of the cheque amount within fifteen days from the date of receipt of the said notice. But in spite of the same, the petitioner and his co-accused failed to make the payment to the complaint/respondent No. 1. Consequently, the complainant/ respondent No. 1 was constrained to file the complaint (Annexure P-1). Vide order dated 25.5.2007, the petitioner and his co-

accused were summoned to face trial for the offence punishable under Section 138 of the Act.

7. Earlier the petitioner filed a petition under Section 482, Cr.P.C, before this Court for quashing of the impugned complaint and the summoning order dated 25.5.2007. The said summoning order was set aside and the matter was remitted to the summoning Court for compliance of the provisions contained in Section 202(1), Cr.P.C., and to proceed further with the matter in accordance with law.

8. In compliance of the order dated 7.9.2011, passed by this Court, report under Section 202, Cr.P.C., was requisitioned. It was averred in the said report that the petitioner had resigned from the Directorship of M/s Vipul Ltd. on 11.12.2006 while yet another Director, namely, Raj Kishore Kaushik, had resigned from the Directorship on 9.5.2008. Form No. 32 regarding resignation of the petitioner and Raj Kishore Kaushik, were also collected and presented with the report under Section 202, Cr.P.C.

9. Learned Judicial Magistrate Ist Class, Faridabad/ summoning Court vide its order dated 21.8.2013 (Annexure P-3), once again ordered the summoning of the petitioner to face trial for the offence punishable under Section 138 of the Act. The operative part of the said order, whereby the petitioner was

summoned, is reproduced below:-

> *"8. The defence coming across in the report under Section 202 Cr.P.C. on behalf of accused no. 1 Moti Masand, is that he had resigned from the directorship of accused No. 1 i.e. M/s Vipul Ltd. on 11.12.2006. The copies of his notice of resignation and Form No. 32 have also been attached with the said report. At the stage, it is not possible for this Court to confirm the fact as to whether accused Moti Masand had relinquished the post of Director of M/s Vipul Ltd. on 11.12.2006 and similarly, the authenticity of the Form No. 32 alongwith the notice of resignation appended alongwith the report under Section 202 Cr.P.C. cannot be determined at this stage. The factum of his resignation could be determined only by way of evidence tendered during the trial. Furthermore, even more importantly, even if it is assumed for the sake of argument that Moti Masand had indeed resigned from the post of Director of M/s Vipul Ltd. on 11.12.2006, the said fact cannot serve as a ground for not summoning him as the cheque in question is shown to have been issued by him prior to the said date of resignation. Hence, prima facie, all ingredients of Section 138 of NI Act appear to have been duly satisfied and sufficient grounds exist to summon accused No. 1 i.e. M/s Vipul Ltd. through its Director Moti Masand."*

10. Learned senior counsel for the petitioner has argued that the payment of the cheque amount was stopped by the

company of which the petitioner was a Director, since the land in question which was allegedly purchased by the said Company, was acquired by the Government. The said fact has to be substantiated during course of trial on the basis of evidence to be led. At this stage, it will be pre-mature for this Court to comment anything with regard to the acquisition of the land in dispute. After scanning the material to be placed on record, the said issue can be adjudicated, therefore, at this stage this Court does not find any merit in the first argument raised by the learned senior counsel.

11. So far as the second argument is concerned, learned senior counsel has placed reliance on the judgments of Hon'ble the Supreme Court of India delivered in the cases of **DCM Financial Services Ltd. v. J.N. Sareen and another, 2008 (3) R.C.R. (Criminal) 152** and **Mrs. Anita Malhotra v. Apparel Export Promotion Council and another, 2011 (4) R.C.R. (Criminal) 835**.

12. With the assistance of learned senior counsel for the petitioner I have perused both the judgments cited by him. In the case of **DCM Financial Serices Ltd. (supra)**, the facts were that a post-dated cheque was issued by a Company and the respondent was a Director at that time. The said Director had resigned from the directorship and intimation to that effect was given to the

complainant (drawee). At the time when the cheque was dishonoured, the respondent in the said case was not the Director of the Company and, as such, it was held that he could not be prosecuted. However, in the case in hand, concededly the petitioner (Moti Masand) was signatory to the cheque. It is not the case of the petitioner that after resignation and before filing of the complaint, the complainant/respondent No. 1 was informed that the petitioner (Moti Masand) had resigned from the Directorship of the Company i.e. M/s Vipul Ltd. There is a difference between a Director and the person who signs the cheque and, as such, the case law in the matter of **DCM Financial Services Ltd. (supra)** will not be of any help to the petitioner in the present case.

13. In the case of **Mrs. Anita Malhotra (supra)**, the facts were that the cheques were issued in the year 2004 while the Director who was proposed to be prosecuted had resigned in the year 1998 and, as such, the proceedings qua the said Director were quashed. Furthermore, in the said case the complainant was not able to substantiate as to how and in what manner the Director of the Company was incharge of or was responsible for conduct of the business of the Company. Thus, it was held that mere bald statement that the Director was incharge of and was responsible to the Company for conduct of its business was not sufficient.

14. The facts of the case in hand are entirely different. It is conceded case of the petitioner that he had signed the impugned cheque and thereafter the same bounced. In the consideration of this Court, the petitioner who had signed the cheque and thereafter resigned would not be exonerated from the liability.

15. In view of above discussion, there is no merit in the present petition and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

January 9, 2015
Pkapoor