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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34647-2015

Date of Decision : October 9th, 2015

Nishant Sehgal and others Petitioners

Versus

HDFC Bank Ltd. Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. R.S.Bajaj, Advocate,
for the petitioners.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure for quashing of Criminal Complaint No. 3567 of 16.12.2014 titled **HDFC Bank Ltd. Vs. Kapsons Industries Limited and others** [Annexure P/3] under Section 138 of the Negotiable Instruments Act, 1881 [for short, "the Act"] has been filed by Nishant Sehgal, Prashant Sehgal and Anita Sehgal, petitioners herein, mainly on the ground that the present petitioners were summoned to face trial on the basis of summoning order dated 1.4.2015 [Annexure P/4] passed by Judicial Magistrate Ist Class, Jalandhar and subsequent proceedings therefrom.

2. Learned counsel submitted that the petitioners, namely, Nishant Sehgal, Prashant Sehgal and Anita Sehgal were earlier Directors of M/s Kapsons Industries Limited, Jalandhar. Subsequently, all of them resigned from the said company on 1.8.2013 and copies of the resignation letter are available on the file as Annexure P/1. Required intimation was given by the Company to the Registrar of Companies on Form No. 32 vide Annexure

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P/2. As such, the petitioners were no more directors of M/s Kapsons Industries Limited with effect from 1.8.2013. The cheques in question were issued by the Company on 1.9.2014 and 18.9.2014 and the same were not even signed by the petitioners. He has further submitted that learned Magistrate has passed the summoning order, Annexure P/4, completely ignoring these facts. So, the complaint Annexure P/3 and summoning order, Annexure P/4 qua the petitioners is legally not maintainable. Rather, the same is misuse of process of Court of law and same be quashed while exercising powers under Section 482 Cr.P.C.

3. In support of his plea, learned counsel for the petitioner placed reliance upon judgment of Hon'ble Supreme Court in case **Harshendra Kumar D. Vs. Rebatilata Koley etc., 2011(3) SCC 351**, wherein Hon'ble Supreme Court of India has observed that if a cheque issued by a company and plea taken that one of the Directors 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**.

4. As regards to maintainability of petition under Section 482 Cr.P.C., in such like cases, Hon'ble Supreme Court in **Gurmala Sales Private Limited Vs. Anu Mehta and others 2015[1] PLJR [SC] 129** has held 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.

5. Having considered the submissions made by learned counsel for

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the petitioners and taking into consideration the aforesaid facts that the petitioner had resigned from the Board of Directors of the Company on 1.8.2013 and required information was sent on Form 32 [Annexure P/2] to the Registrar, the petitioners ceased to be Directors of the Company on 1.8.2013. More so, they are not the signatories to the cheques in question. The alleged cheques are dated 1.9.2014 and 18.9.2014 respectively and was returned dishonoured on 13.10.2014. Thus, on the date of issuance of cheques, the petitioners were not the Directors of the Company. More so, they are not the signatories to the cheques in question. Hence, 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 is not maintainable qua present petitioners. Learned trial Magistrate has completely ignored this fact while passing the summoning order, Annexure P/4.

6. In view of the above, the present petition is allowed and the Criminal Complaint No. 3567 of 16.12.2014 titled **HDFC Bank Ltd. Vs. Kapsons Industries Limited and others** [Annexure P/3] and the summoning order dated 1.4.2015 [Annexure P/4] and all subsequent proceedings arising therefrom are quashed **qua the present petitioners only.**

(SHEKHER DHAWAN)
JUDGE

October 9th, 2015
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